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FOREWORD

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TREASURY DECISIONS

UNDER INTERNAL REVENUE LAWS

OF THE UNITED STATES

Volume 15

January—December, 1912

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TREASURY DECISIONS

UNDER INTERNAL REVENUE LAWS
OF THE UNITED STATES

VOL. 15

JANUARY 1, 1912, TO
DECEMBER 31, 1913

W. G. McADOO
Secretary of the Treasury

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

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INTRODUCTION.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 31, 1913.

To officers of internal revenue and others:

The within decisions of the Commissioner of Internal Revenue, rendered during the calendar years 1912 and 1913, upon the construction to be given to the various acts of Congress relating to the internal revenue, are published for the information and guidance of officers of the internal revenue and others concerned.

This volume contains rulings numbered from 1745 to 1926, inclusive, and embraces all regulations and rulings of the Treasury Department, up to December 31, 1913, on the subject of the income tax imposed by the act of October 3, 1913.

W. H. OSBORN,
Commissioner of Internal Revenue.

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INTERNAL REVENUE.

(T. D. 1745.)

Information concerning internal-revenue matters.

Employees of the Internal Revenue Bureau are prohibited from disclosing, in any way, any information relative to the business of the bureau, except in the manner authorized by law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 2, 1912.

To all employees connected with the Bureau of Internal Revenue:

Special care shall be exercised to see that no person, except in the manner authorized by law, shall be permitted to have access to, inspect, or in any manner become cognizant of, any record, memorandum, note, or other thing relative to any matter pending in the bureau or to any business being transacted therein.

No person connected with this bureau shall, in any manner not expressly authorized by law, communicate, divulge, or make known in any way any facts or circumstances relating to any case reported to or pending in the bureau, or business transacted therein.

Any employee of the Government connected with this bureau who violates the above provisions, in spirit or in letter, will be recommended for summary dismissal from the service.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1746.)

Modification of Internal Revenue Regulations No. 30, relating to bonds given by manufacturers using denatured alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 10, 1912.

To collectors of internal revenue and others:

So much of article 78 of regulations No. 30 of August 22, 1911, as provides that bonds given by manufacturers using denatured alcohol

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shall be in a penal sum of not less than $5,000, is hereby amended so as to read as follows:

"The manufacturer will also file with his notice a bond in duplicate, with sureties satisfactory to the collector and in a penal sum sufficient to cover the tax on all alcohol that may be, at any time, on hand, in transit, or unaccounted for, and in no case less than $500."

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

(T. D. 1747.)

Certificates of clearance covering articles exported, free of tax, under internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 12, 1912.

To collectors of customs and others concerned:

To avoid the duplication of clearance certificates, Form F, prescribed in article 107 of Internal Revenue Export Regulations No. 29, collectors of customs will hereafter furnish such clearance certificates to collectors of internal revenue only. Certificates so furnished will be forwarded by the last-named collectors to the Commissioner of Internal Revenue with the bonded export account on which credit therefor is taken. In the case of distilled spirits exported in *original* packages, the clearance certificate issued should be accompanied by the customs gauger's certificate and detailed report of gauge, as provided in said article 107.

Where, by reason of noninspection of the articles shipped or for other reason a certificate of clearance can not be issued, application for relief, accompanied by such evidence of exportation as the exporter may have to submit, should be filed with the collector of customs, who will, after indorsing thereon his report and recommendation, forward the same to the Commissioner of Internal Revenue. If the evidence of shipment so furnished is found to be satisfactory, the collector holding the exporter's bond will be authorized to enter proper credit thereon.

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

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(T. D. 1748.)

Modification of regulations relating to distilling corporations doing business under other than the corporate names.

[Circular No. 5—Int. Rev. No. 743.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 15, 1912.

To collectors of internal revenue:

Regulations No. 7 are hereby so amended as to permit a distilling corporation to conduct the business of distilling spirits in a name or style other than the lawful corporate name upon compliance with the regulations governing a change of name by an individual or firm operating a distillery.

As in case of an individual or firm, a new distiller's notice must be filed and also a new distiller's bond, unless a bond has already been filed and is in force which recites the name to be adopted as the name or as one of the names under which it proposes to carry on the business of distilling.

All regulations and instructions inconsistent herewith are hereby rescinded.

ROYAL E. CABELL, *Commissioner.*

Approved:
FRANKLIN MACVEAGH, *Secretary of the Treasury.*

(T. D. 1749.)

Stamping spirits.

Spirits reduced in proof by addition of water only not to be stamped as rectified spirits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 15, 1912.

To collectors of internal revenue and revenue agents in charge of divisions:

It has come to the knowledge of this office that distilled spirits are being dumped for rectification and gauged out from rectification without anything having been added to the same except water, thus unnecessarily and wrongfully imposing an expense upon the Government of about 20 cents per package for each package so stamped out for the services of gauging officers.

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Collectors are again reminded that the addition of water only to spirits does not constitute rectification, and will take immediate steps to see that spirits thus treated are not stamped out as rectified spirits.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1750.)

Directions for taking gravity of distillery beer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1912.

To collectors of internal revenue:

The following instructions are for storekeeper-gaugers in taking the gravity of mash and beer:

METHOD OF DETERMINING GRAVITY.

All mashes and beers are to be strained through a fine sieve or cheesecloth before making the determination.

Rye mashes *only*, at the time of filling, are to be diluted with water one to one after straining, and the gravity determined on the diluted sample. After the beer is 24 hours old it is not to be diluted before making the determination.

The temperature of the *determination* is to be recorded in each case in the proper column.

Gravity is to be read to per cents and tenths.

Decimals are to be used in place of fractions.

Actual figures are to be recorded in each case; ditto marks are not to be used. Gravity is not to be corrected for temperature.

Distillers are to be required to furnish, at their own expense, accurate stems graduated to tenths, vessels in which to take the samples, sieves, and a cylinder or cup to hold the strained samples. (Revised Statutes, 3249–3303.)

ROYAL E. CABELL, *Commissioner.*

(T. D. 1751.)

Oleomargarine—Decision of United States Supreme Court in United States v. Barnes.

1. THE OLEOMARGARINE ACT.

The oleomargarine act of August 2, 1886, is not a complete act in itself, but contemplates the established system of revenue laws to which resort should be had in carrying it into effect.

2. SECTION 3177, REVISED STATUTES, APPLIES.

Section 3177, Revised Statutes, authorizing revenue officers to enter premises where taxable articles are kept, and providing a penalty for refusal to admit and for forcibly obstructing or hindering such officers in the exercise of this power, applies to cases arising under the oleomargarine law.

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3. Erroneous Construction.

The construction that section 3177, Revised Statutes, is not applicable in oleomargarine cases because not specifically mentioned in the oleomargarine act is erroneous, as the sections mentioned as being applicable relate only to special taxes.

4. The Maxim "Expressio Unius est Exclusio Alterius."

This maxim is a rule of construction and not of substantive law, and serves as an aid to discover the legislative intent when that is not otherwise manifest.

5. General Laws Relative to Internal Revenue not Affected by Subsequent Laws.

The same reasoning applies to internal-revenue laws as to the tariff system in regard to which the Supreme Court has decided that the whole system must be regarded in each alteration, and subsequent legislation does not supersede general laws unless the contrary clearly appears.

6. Decision of Lower Court Reversed.

The decision of the United States District Court, Western District of Kentucky, is reversed.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., January 18, 1912.

The appended decision of the United States Supreme Court in the case of the United States, plaintiff in error, *v.* B. H. Barnes and F. D. Barnes, is published for the information of internal-revenue officers and others concerned.

Royal E. Cabell, *Commissioner.*

Supreme Court of the United States. No. 565. October Term, 1911.

United States, plaintiff in error, v. *B. H. Barnes and F. D. Barnes.*

In error to the District Court of the United States for the Western District of Kentucky.

[January 9, 1912.]

Mr. Justice Van Devanter delivered the opinion of the court:

The sole question presented for decision by this writ of error is, whether Revised Statutes, section 3177, is applicable to the collection or enforcement of the specific tax imposed on oleomargarine by the act of August 2, 1886 (c. 840, 24 Stat. 209). In the District Court a negative answer to the question was given, and an indictment drawn and returned upon the contrary view was held bad upon demurrer. To a right appreciation of the question it is essental that a brief outline be given of the internal-revenue laws, of which section 3177 is a part, and of the later oleomargarine act.

Title XXXV of the Revised Statutes is a codification and consolidation, according to an orderly arrangement, of all the then existing laws relating to internal revenue. It is subdivided into chapters, each embracing cognate sections bearing upon a particular branch of the general subject. The first two chapters, one dealing with the officers of internal revenue and the other with assessments and collections, are, with minor exceptions, general in their terms and application. The third chapter deals with "special taxes" exacted of those who engage in designated classes of business, such as rectifying or selling distilled spirits and manufacturing or selling cigars; other chapters deal separately with specific taxes imposed upon particular articles or objects, such as distilled spirits and cigars, and the final chapter comprises provisions common to several objects of taxation. Section 3177 is a part of the second chapter, dealing with assessments and collections, and reads:

Any collector, deputy collector, or inspector may enter, in the daytime, any building or place where *any articles or objects subject to tax* are made, produced, or kept,

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within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

It will be perceived that the section is comprehensive in its terms and evidently designed to promote the enforcement of the revenue laws as to "any articles or objects subject to tax."

The act of August 2, 1886, is a revenue law of the same class as those embodied in Title XXXV of the Revised Statutes. It imposes a specific tax on oleomargarine and "special taxes" on those who engage in its manufacture or sale, and contains several administrative and penal provisions. But it does not purport to be independent of other legislation or complete in itself. On the contrary, it plainly contemplates the existence of an established system of revenue laws, to which resort shall be had in carrying it into effect. Section 3, which imposes the special taxes, declares that sections 3232 to 3241 and 3243 of the Revised Statutes "are, so far as applicable, made to extend to * * * the *special taxes imposed by this section* and to the persons upon whom *they* are imposed."

It is the express extension of those sections to the special taxes imposed by the oleomargarine act which gives rise to the question before stated. The position taken by the defendants in error, and sustained by the District Court, is that that extension of particular sections is an implied exclusion of all others. *Expressio unius est exclusio alterius.*

We are unable to assent to that position. The maxim invoked expresses a rule of construction, not of substantive law, and serves only as an aid in discovering the legislative intent when that is not otherwise manifest. In such instances it is of deciding importance; in others, not. In the instance now before us too much is claimed for it. The sections named in section 3 of the oleomargarine act are a part of chapter 3 of Title XXXV of the Revised Statutes. They relate exclusively to special taxes, and are so restricted in their terms that it is at least doubtful that they could be applied to any special taxes not imposed by that chapter, unless expressly extended to them. To illustrate, section 3232, which precedes the others and is more or less a key to their meaning, declares:

No person shall be engaged in or carry on any trade or business *hereinafter mentioned* until he has paid a special tax therefor in the manner *hereinafter provided.*

On the other hand, the sections in chapters 1 and 2 are, with minor exceptions, so general in their terms as to leave no doubt of their applicability to taxes imposed by subsequent legislation containing no provision to the contrary. In other words, the difference between the sections named and those in chapters 1 and 2 discloses an occasion for affirmatively extending the operation of the former and no occasion for mentioning the latter. It also is apparent that the oleomargarine act will measurably fail of its purpose if the general provisions of chapters 1 and 2 are not applicable to the taxes which it imposes; for, as before indicated, it does not in itself provide a complete or effective scheme for their enforcement. Neither does it contain any provision for the redress of those from whom such taxes are erroneously or illegally exacted, although the settled policy of the Government long has been to afford relief from all such exactions as is shown by sections 3220, 3226, 3227, and 3228 in chapter 2. These omissions are cogent evidence that it is intended that recourse shall be had to the general provisions of chapters 1 and 2, save as in the oleomargarine act it may be provided otherwise.

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Much of our national legislation is embodied in codes, or systematic collections of general rules, each dealing in a comprehensive way with some general subject, such as the customs, internal revenue, public lands, Indians, and patents for inventions; and it is the settled rule of decision in this court that where there is subsequent legislation upon such a subject it carries with it an implication that the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears. Thus, in Wood *v.* United States (16 Pet., 342, 363), where a question arose as to what effect should be given a general provision of an early customs law in view of a later enactment upon that subject, it was said:

And it may be added, that in the interpretation of all laws for the collection of revenue, whose provisions are often very complicated and numerous to guard against frauds by importers, it would be a strong ground to assert that the main provisions of any such laws sedulously introduced to meet the case of a palpable fraud, should be deemed repealed, merely because in subsequent laws other powers and authorities are given to the customhouse officers, and other modes of proceeding are allowed to be had by them before the goods have passed from their custody, in order to ascertain whether there has been any fraud attempted upon the Government. The more natural, if not the necessary, inference in all such cases is, that the legislature intend the new laws to be auxiliary to and in aid of the purposes of the old law, even when some of the cases provided for may equally be within the reach of each. There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions to lead to the conclusion that the later laws abrogated, and were designed to abrogate, the former.

In Saxonville Mills *v.* Russell (116 U. S., 13, 21) it was said, in disposing of a like question:

It would be an unsound and unsafe rule of construction which would separate from the tariff revenue system, consisting of numerous and diverse enactments, each new act altering it, in any of its details, or prescribing new duties in lieu of existing ones on particular articles. The whole system must be regarded in each alteration, and no disturbance allowed of existing legislative rules of general application beyond the clear intention of Congress.

And in Catholic Bishop of Nesqually *v.* Gibbon (158 U. S., 155, 166, 167), where the question was, whether general statutes defining the powers of the officers of the land department were applicable to a grant of public lands by a subsequent act of Congress, it was said:

While there may be no specific reference in the act of 1848 of questions arising under this grant to the land department, yet its administration comes within the scope of the general powers vested in that department. * * * It may be laid down as a general rule that, in the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the land department. It falls there unless there is express direction to the contrary.

We conclude that, while the express extension of particular sections in chapter 3, dealing with special taxes, to the like taxes imposed by section 3 of the oleomargarine act may operate as an implied exclusion of the other sections in that chapter, it does not in any wise restrict or effect the operation of any of the general sections in chapters 1 and 2. And as section 3177 is a part of chapter 2, is general in its terms, and does not appear to be repugnant to any provision in the oleomargarine act, we think the question first above stated must be answered in the affirmative.

The cases of Craft *v.* Schafer (154 Fed. Rep., 1002); Tucker *v.* Grier (160 Fed. Rep., 611), and Hastings *v.* Herold (184 Fed. Rep., 759), although not involving section 3177, disclose some contrariety of opinion in the lower Federal courts upon the matter principally discussed herein, and we deem it appropriate to observe that our conclusion has been reached only after a careful consideration of those cases.

Reversed.

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(T. D. 1752.)

Oleomargarine—Special taxes and penalties.

T. D. 1455 revoked.—Penalties imposed for failure to make return or for making false return under section 3176, Revised Statutes, to be assessed hereafter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 18, 1912.

To collectors and other officers of internal revenue:

Your attention is called to the decision of the Supreme Court of the United States in the case of the United States *v.* Barnes (T. D. 1751). That decision holds squarely that chapter 2, "of assessments and collections," as well as the other general provisions of the internal-revenue law, are applicable to the act of August 2, 1886, as amended, commonly known as the "oleomargarine act," and is superior authority to the decisions of the courts of appeal in the cases of Schafer *v.* Craft and Tucker *v.* Grier.

T. D. 1455 is therefore hereby revoked, and you are directed, in reporting the liability of manufacturers of and dealers in oleomargarine, adulterated or renovated butter, for assessment, to report also any penalties due under the provisions of section 3176, Revised Statutes.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1753.)

Withdrawal of tax-free alcohol for scientific purposes.

Tax-free alcohol, withdrawn from bond for scientific purposes, subject to seizure and forfeiture if found on premises of a wholesale liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1912.

SIR: I am in receipt of your letter of the 30th ultimo, in reference to tax-free alcohol withdrawn from bond by hospitals and other institutions for scientific purposes, and requesting that you be advised whether the alcohol when so withdrawn should be sent directly to the institution named in the permit, or whether the same may be sent to a wholesale liquor dealer, if "a designated agent," and if so, whether such dealer "may keep it any length of time he sees fit, provided the hospital is willing, before delivery."

It appears from your letter that many such deliveries are being made, and you suggest that this practice may afford the dealer dangerous opportunity to "substitute water, etc.," inasmuch as the institutions referred to rarely if ever proof the alcohol when received by them.

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In authorizing such institutions to withdraw from bond alcohol, free of tax, for scientific purposes, the law (sec. 3297, Rev. Stat.) evidently contemplates the immediate and direct shipment of the alcohol to such institutions, whether the withdrawal is made by the principal or by an agent.

While there is no specific provision regarding such shipments, there are provisions, applicable to wholesale liquor dealers, which clearly prohibit the receiving or storing of any such spirits on the premises of such dealers.

Section 3319 expressly prohibits any rectifier, wholesale, or retail liquor dealer from purchasing or receiving any distilled spirits in quantities greater than 20 gallons from any person other than an authorized rectifier, distiller, or wholesale liquor dealer; and section 3289 declares—

> All distilled spirits found in any cask or package containing five gallons or more, without having thereon the marks and stamps required therefor by law, shall be forfeited to the United States.

In the cases referred to in your letter, the alcohol is received by the dealer not as a dealer, but as the agent of the principal, who, under the law and the permit granted, is alone authorized to withdraw the spirits free of tax and solely for the purpose authorized by the law. It is clear, therefore, that spirits so withdrawn can not lawfully be received on the premises of any liquor dealer, and if found on any such premises (and not having thereon the marks and stamps required by law for spirits on which tax has been paid) the same are subject to seizure and forfeiture.

You will see that all such dealers in your division are so advised, and you will cause seizure to be made of all such spirits hereafter found on any such premises and report your action to this office.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. C. H. INGRAM,
Internal-Revenue Agent, Chicago, Ill.

(T. D. 1754.)

Special excise tax on corporations.

Regulation to govern the ascertainment of the rate of depletion of deposits and the return of cash investment to corporations with respect to natural-gas-producing properties.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 22, 1912.

To collectors of internal revenue:

Item 80 of T. D. 1675 is hereby amended by striking out the parenthetical word "gas," and the following regulation to govern

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the return of capital invested in gas-producing properties on the basis of the rate of depletion of deposits in making return of annual net income for the special excise tax on corporations is issued in lieu thereof:

1. In case of corporations whose business consists of either producing, selling, transporting, or distributing natural gas, the conduct of such business will be understood to comprehend two classes of gains or losses, viz: (*a*) The gain or loss resulting from the sale of capital assets—i. e., either the increment or the loss arising through possessing over a period of time the investment in the same; (*b*) the trading or commercial gain attached to the conduct of the industry, the employment of working capital, the effort and risk involved.

2. In the ascertainment of net income, deductions will be allowed for depreciation of investment in the field and main lines of such corporations on the basis of exhaustion of deposits.

Claims for depreciation on account of depletion or depreciation in accordance with the regulations based on any value other than the cost of the property plus the cost of development will not be allowed.

3. For the purpose of enabling corporations engaged in the production and transportation of natural gas to properly gauge depreciation of investment in the field and main line divisions on account of depletion to be deducted each year in making their annual return of net income, the following methods are recommended:

First. That the producing gas area of said company be laid off in squares not exceeding 1 square mile, and that three months prior to September 30 of each year, one or more representative wells be shut in in each square or territory, and that as of September 30 an accurate gauge be taken of the rock pressure of said wells, and the decline in the average rock pressure from year to year shall be considered as the base of determining the exhaustion of deposit. For instance, a corporation may have 80 square miles of territory and the average rock pressure September 30, 1909, may have been 600 pounds per square inch. On September 30, 1910, the average rock pressure may have been 540 pounds, or a decline of 10 per cent, and this percentage is to be applied as a basis of depreciation for the year 1910 on the cost of the field and main line divisions, less depreciation charged off prior to that date and any salvage value that may remain in the property.

Second. If by reason of lack of area or for any other good and sufficient reason any corporation engaged in the production of gas shall prefer the "volume basis" as more accurately reflecting the rate of exhaustion of deposits, the amount of capital invested to be returned out of the income of any given year may be determined on that basis. In case the "volume basis" is adopted, the volume of each well must be taken with instruments generally recognized as

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reliable for determining the daily volume produced by each well at stated periods each year, and the percentage of loss in daily production shall determine the percentage of the capital investment which shall be returnable out of gross income and the proper deduction to be made each year in the return of annual net income as return of capital invested.

4. Any unreturned cash investment remaining when wells or territory have to be abandoned or lines taken up because of failure of the supply of gas, less salvage, may be deducted as part of the reasonable depreciation for the year in which such territory is abandoned unless such values shall have been returned in the reduction made because of loss of volume or decrease in rock pressure, which in such case would be considered as having reached the vanishing point.

5. The investment cost of properties reduced to a cash basis to natural gas companies in the distributing or city-plant divisions shall be depreciated in accordance with the general regulations and in no instance shall exceed 5 per cent per annum.

6. The cost of drilling gas wells has been held by competent authorities as properly chargeable to either investment or expense. While it is preferred that the cost of drilling wells be charged to investment, the general custom of producers of natural gas in charging the cost of the drilling to expense will be recognized, and returns of net income may be made in accordance therewith. Each return of annual net income should in such case state that the expense of drilling gas wells has been charged to expense. All other expenditures in tangible property in development work shall be chargeable to capital assets.

7. The general custom of natural gas companies in the distribution of the cost of drilling wells will be recognized, and the return of net income may be made in accordance therewith.

8. Each excise tax return should be accompanied by memoranda showing how the depreciation deduction for the year has been arrived at—i. e., the cost of the property in field and main lines, the result of gauges of rock pressure or measurement of volume, and in addition the investment in city plants.

9. All depreciation deductions made in the return of annual net income must be evidenced by proper entries on the books of the corporation reporting, so as to show a reduction in the capital assets equal to the cash investment returned, as provided above, out of gross income.

NOTE.—By following the plan suggested each corporation engaged in the production and sale of natural gas will secure the return of the total cash investment, less salvage, in field and main line developments by the time the deposits have been exhausted.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1755.)

Special excise tax on corporations.

Regulation to govern the ascertainment of the rate of depletion of deposits and the return of cash investment to corporations with respect to petroleum-producing properties.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 22, 1912.

To collectors of internal revenue:

Item 80 of T. D. 1675 is hereby amended by striking out the parenthetical word "petroleum," and the following regulation to govern the rate of return of capital invested on the basis of the rate of depletion of oil-producing properties in making return of annual net income for the special excise tax on corporations is issued in lieu thereof:

1. In the case of corporations whose business consists of producing and disposing of crude petroleum, the conduct of such business will be understood to comprehend two classes of gains or losses, viz: (*a*) The gain or loss resulting from the sale of capital assets—i. e., either the increment or the loss arising through possessing over a period of time the investment in the same. (*b*) The trading or commercial gain attached to the conduct of the industry, the employment of working capital, and the effort and risk involved.

2. In the ascertainment of net income, deduction will be allowed for depreciation arising from exhaustion of deposits and for depreciation and obsolescence of improvements in accordance with the general regulations respecting depreciation allowances, on the basis of the original capital-investment cost, reduced to a cash basis, of the properties concerned to the company reporting. Claims for depreciation on account of depletion of deposits based on any values other than the cost of the property in cash or cash values (including cost of development) will not be considered.

3. In all producing oil fields an average value per barrel of the settled daily production shall be adopted as the guide in determining the value of the property, and the following method in depreciating said values is recommended:

Each corporation will fix this valuation per barrel as of January 1, 1909, or upon the date of commencement of production, if after that date, for ascertaining the deductions for depreciation on the basis of depletion of deposits. This valuation per barrel should be based on the cost of the property to the corporation, plus the cost of the development thereof with a proper deduction from that valuation for the number of years the property has been in operation, and the re-

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sulting proportioned decrease in daily production of oil. With this basis per barrel fixed as of January 1, 1909, or at the date of commencement of production, if after January 1, 1909, the value of the property as a whole is to be determined by applying this unit value per barrel to the daily average production for the month of December, or other representative month, in the year for which the return is made. The representative month chosen shall be the same in each year. This unit valuation per barrel is to be retained in arriving at all future depreciation deductions, except where an additional production is secured by drilling or an additional production is acquired by purchases, in which cases a new average rate per barrel based upon the actual cash invested in such development, or in the new properties and their development, may be adopted. The amount of income each year to be applied to the return of the cash investment shall be ascertained by multiplying the unit valuation ascertained as required above by the difference between the daily average production in barrels during the representative month of each year. The product of such multiplication will be the amount deductible from gross income on account of return of cash investment based upon the rate of depletion of deposits.

4. The cost of drilling and equipping new producing wells shall be considered additions to capital investment account; the expense of drilling dry holes may be charged to profit and loss.

5. The amount of petroleum produced and sold during the year or the price received for the same will not, so far as the application of this regulation to determine depreciation is concerned, affect the value of the property at the end of the year, which value is based only on the comparative rate of decrease in production in accordance with the standard unit value ascertained as stated above.

6. Each excise tax return should be accompanied with a memorandum showing how the standard unit valuation was arrived at, i. e., the valuation of the producing property as of January 1, 1909, or at the commencement of development, if after that date, and such additional investment in development as may have been made during the year, together with the daily average yield for each month of the year, or for each month since the commencement of operation, if subsequent to January 1, 1909.

7. Where properties are operated upon lease, the cost of the leasehold interest, plus the cost of development, shall be the basis for determining the unit valuation for the purpose of providing for the deduction from gross income of the returnable cash investment.

8. All depreciation deductions from the net income return must be evidenced by proper entries on the books of the corporation report-

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ing, so as to show a reduction in the capital assets equal to the cash investment returned, as provided above, out of gross income.

NOTE.—It will be apparent that by following the plan suggested, the value of the producing property appearing in the capital assets of the company will be automatically and wholly extinguished coincident with the complete exhaustion of the product, with the exception of such salvage as may remain after said exhaustion.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1756.)

Indorsements on Form 402, etc.

No longer necessary to fill out indorsement fold on requisitions for stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 30, 1912.

SIR: This office is in receipt of your letter of January 25 in which you ask to be advised as to whether or not it is still necessary to fill out the indorsement fold on Form 402, requisition for case stamps for distilled spirits bottled in bond.

Recent changes in the method of filing these forms in this office render such indorsement unnecessary, and you are at liberty to discontinue the same not only on Form 402 but on all other forms making requisitions for stamps. Indorsements should not be omitted from any other forms, however, unless specifically authorized.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. L. F. PETTY,
Collector Fifth District, Louisville, Ky.

(T. D. 1757.)

Withdrawal of alcohol.

Instructions relative to the withdrawal of alcohol under section 3297, Revised Statutes, and prescribing certain additional formulas which have been approved for the destruction of the identity of alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 26, 1912.

To collectors of internal revenue and others concerned:

In order to secure uniformity in the issuance of permits for the withdrawal of alcohol free of tax under section 3297, Revised Statutes, for scientific purposes by incorporated and chartered institutions and

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to safeguard the use of such alcohol under the provisions of section 3297, Revised Statutes, and T. D. 1731, permits for such withdrawals will be issued to hospitals and sanitariums to which the privileges of this section have heretofore been extended only on applications which contain in full the formula or formulas embodied in the bond filed for the withdrawal of alcohol for such institutions, which formula or formulas must have been previously approved by the Commissioner of Internal Revenue.

With a view to the destruction of the identity of the alcohol in the chemical laboratories of such institutions, as set forth in article 1, T. D. 1731, the following formulas have been approved by this office, viz:

FOR ANTISEPTIC PURPOSES IN GENERAL.

1. Alum 10 grains, camphor 3 grains, alcohol 4 ounces.
2. Carbolic acid 1 part, alcohol 99 parts.
3. Formaldehyde 1 part, alcohol 250 parts.
4. Alum 2 ounces, sulphate of zinc 1 ounce, alcohol 1 gallon.
5. Alum 1 dram, camphor 1 ounce, alcohol 1 pint.
6. Bichloride of mercury 1 part, alcohol 2,000 parts.
7. Alum 2 ounces, salicylic acid 2 ounces, II gaultheria 2 ounces, water 1 pint, alcohol q. s. ½ gallon.
8. Carbolic acid 2 drams, oil gaultheria 20 drops, alcohol 1 gallon.
9. Bichloride of mercury 0.8 gram, hydrochloric acid 60 c. c., alcohol 640 c. c., water 300 c. c.
10. Bichloride of mercury 1½ grains, hydrochloric acid 2 drams, alcohol 4 ounces.
11. Bicarbonate of soda 3 ounces, extract of hamamelis 16 ounces, water 16 ounces, alcohol 16 ounces.
12. Formaldehyde 2 parts, glycerin 2 parts, alcohol 96 parts.
13. Oil cajuputi 1 dram, alcohol 1 pint.
14. Tannic acid 12 parts, alcohol 125 parts, water 125 parts.
15. Carbolic acid 1 dram, tannic acid 1 dram, alcohol 1 pint, water 1 pint.
16. Alum ½ ounce, formaldehyde 2 drams, camphor 1 ounce, alcohol and water each 1 pint.

Applicants may incorporate one or more formulas in the conditions of the bonds filed, but are restricted to the use of the alcohol according to the formulas incorporated therein.

Withdrawals will not be permitted under bonds in which a formula does not appear, and applications and bonds should not be submitted to this office for consideration and approval which contain formulas differing from those heretofore mentioned and which have been approved by this office.

As it is the policy of the office not to multiply the number of formulas, and as it is believed that those above set forth will meet all requirements, consideration will not be given to other formulas with a view to their approval and publication.

The instructions herein contained supersede those contained in T. D. 1739, in so far as the same are in conflict therewith.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1758.)

Denatured alcohol.

Modifying Formula No. 12 for specially denatured alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 29, 1912.

Formula No. 12, prescribed on page 49 of Regulations No. 30, relating to the manufacture, sale, and use of denatured alcohol, approved August 22, 1911, is hereby modified as follows:

To 100 gallons of ethyl alcohol add 1 gallon of pyridin bases and 2 gallons of coal-tar benzol, or,
(Alternative) To 100 gallons of ethyl alcohol add 5 gallons of coal-tar benzol.
The benzol shall be subject to the specifications as are imposed in Formula No. 2*a*.

The use of Formula No. 12 as herein modified is authorized in the manufacture of imitation leather.

ROYAL E. CABELL, *Commissioner.*

Approved:
FRANKLIN MACVEAGH,
Secretary of the Treasury.

(T. D. 1759.)

Special excise tax.

Relative to returns of corporations under section 38, act of August 5, 1909.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 5, 1912.

To collectors of internal revenue and others concerned:

RETURNS.

Attention is again called to the provisions of section 38, act of August 5, 1909, relative to annual returns of corporations, joint stock companies, associations, and insurance companies.

Returns of annual net income for the calendar year 1911 are required to be made to collectors of internal revenue on or before March 1, 1912. Primarily, every corporation is subject to this requirement except such as fall specifically within the classes enumerated by the statute as exempt.

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Corporations whose net income does not exceed $5,000, as well as those whose net income exceeds that amount, are required to make this return.

PENALTIES.

Under subsection 8 of the act every corporation that fails to file its return within the required time becomes liable to a specific penalty of from $1,000 to $10,000.

Failure to file the return in case a tax is due subjects the company also to an assessment of 50 per cent additional to the tax.

BLANKS.

Corporations which have not received the blank forms should write immediately to the collector for the same and fill out, and verify and file the same without delay. The Government is under no obligation, however, to furnish blanks, but does so only as a matter of courtesy and convenience. Failure to receive blanks will not be regarded as ground for relief from the penalties incurred.

EXTENSION OF TIME.

If on account of sickness or absence of officers, or for other reason, a company is unable to make its return in time to reach the collector's office on or before March 1, application should be made to the collector for an extension of time not exceeding 30 days, as provided by the statute. This application should be made before March 1 and will not be considered if received later than March 30.

NEW CORPORATIONS.

Each new corporation which was organized during the year should inform the collector of that fact, giving its exact corporate name, address, and nature of its business, so that it may be placed upon the list and be furnished the necessary blank forms.

PUBLICITY.

Nearly all the cases of delinquency occurring last year were the result of ignorance, inadvertence, or neglect.

It is hoped that future delinquency may be avoided, and in order to effect this result this circular is issued and collectors are instructed through the press (without expense), or otherwise, to give as wide publicity as practicable to the instructions herein contained.

ROYAL E. CABELL, *Commissioner*.

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(T. D. 1760.)

Injunction against collectors—Court decision.

1. No Injunction Against Collector in Distraint Proceedings.
The courts have no authority to enjoin a collector from collecting taxes by distraint and sale.

2. No Interference with Commissioner in Requiring New Bond.
The courts will not interfere with the action of the Commissioner of Internal Revenue in requiring, in his discretion, from the distiller a new bond, under section 3293, Revised Statutes.

3. Courts Will Not Interfere with Executive Officers.
When Congress has committed to an officer certain duties requiring the exercise of judgment and discretion, his action will not be reviewed by the courts unless he has exceeded his authority or the court should be of the opinion that his action was clearly wrong.

4. Judgment Reversed.
The judgment of the court below in enjoining the sale under distraint of certain whisky is reversed.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., February 26, 1912.

The appended decision of the United States Circuit Court of Appeals for the Fourth Circuit, in the case of George H. Brown, collector, and The United States Fidelity & Guaranty Co. *v.* D. C. Foster and N. Glen Williams, is published for the information of internal-revenue officers and others concerned.

Royal E. Cabell, *Commissioner.*

United States Circuit Court of Appeals, Fourth Circuit. No. 1042.

George H. Brown, Collector of Internal Revenue, and The United States Fidelity and Guaranty Co., appellants, v. *D. C. Foster and N. Glen Williams, appellees.*

Appeal from the Circuit Court of the United States for the Western District of North Carolina, at Greensboro.

[February 14, 1912.]

Before Pritchard, Circuit Judge, and McDowell and Smith, District Judges.

Smith, District Judge: In the year 1905, and up to January 1, 1906, one Dart C. Foster, a distiller in the Western District of North Carolina, gave bonds under section 3292, United States Revised Statutes, with penalties in the aggregate of $41,400, to the United States for the payment of the taxes due upon certain whisky, to be paid within eight years from and after the entry of the whisky in the bonded warehouse, i. e., until the year 1913. His surety upon the bond was the United States Fidelity & Guaranty Co., and the premium on the bonds to the surety company appears to have been paid in full. Thereafter Foster transferred all his interest in the whisky to the complainant, N. Glen Williams, and departed from the country, and became a citizen of and was, at the time of the action by the Commissioner of Internal Revenue hereinafter mentioned, residing in the Republic of Mexico. In April, 1910, the whisky referred to was, after due legal proceedings, adjudged forfeited to the United States for alleged violations of the internal-revenue law, and judgment was rendered for the

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value of the same in excess of the taxes due the Government of the United States, and thereafter the whisky was restored or released to the owner, N. Glen Williams, upon his executing to the United States a bond for the value of the whisky in excess of the tax. The surety on the warehousing bonds then gave notice to the Commissioner of Internal Revenue that it would contest any claim that its liability as surety on the bond continued after such forfeiture and release, and in view of the complication that had arisen in the case, especially the seizure and release and the notice from the surety, the commissioner concluded that a new bond should be given under the provisions of section 3293 of the Revised Statutes of the United States, and the complainant, N. Glen Williams, having failed to give a new bond when required so to do, the commissioner proceeded to collect the tax by distraint, and advertised the whisky for sale.

The proceeding in this case was brought to enjoin the sale as threatened to be made by the commissioner.

The trial judge below held that the United States had entered into a contract with the distiller, by which the latter was given eight years in which to pay the internal-revenue tax on the distilled spirits in the warehouse, and that in reliance upon that contract the distiller had paid the premium for the whole eight years to the indemnity company. The court further held that under the provisions of section 3293 a new bond should be required in case of death, insolvency, or removal of either of the sureties, and could be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner of Internal Revenue; but that inasmuch as there was no death, insolvency, or removal of the surety herein, the commissioner could only require a new bond in a contingency affecting its validity or impairing its efficiency, and that nothing appeared in this case which either affected the validity or impaired the efficiency of the bond, and that the discretion given to the Commissioner of Internal Revenue was not one that he could exercise in a case in which the court should hold as a judicial matter that a contingency had not arisen affecting the validity or impairing the efficiency of the bond.

The principal question here is whether this power lodged in the Commissioner of Internal Revenue was one which so far rests in his discretion as that the court could review his action in a case in which it is not alleged or proven that any ulterior purpose existed, or there has been any improper abuse of the discretion lodged in him. The deposit of the spirits in the warehouse and the extension of the time for the payment of taxes is solely for the benefit of the distiller, and to enable him to give bond for the payment of the tax instead of paying the tax at once. United States *v.* Witten (143 U. S., 76). Except for this privilege given to him the Government could call upon him to pay the tax at once.

In the opinion of this court the facts in this case are not sufficient to allow the court to interfere with the discretion lodged in the Commissioner of Internal Revenue. "Where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involves questions of law or fact, will not be reviewed by the courts unless he has exceeded his authority, or this court should be of opinion that his action was clearly wrong. Whether such decision is right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction." Bates and Guild Co. *v.* Paine (194 U. S., 106, 109). In that case the Supreme Court ruled as follows:

The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing.

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In Public Clearing House *v.* Coyne (194 U. S., 497) the court held, in referring to the case of School of Magnetic Healing *v.* McAnnulty (187 U. S., 94), that it was within the power of Congress to intrust the Postmaster General with the power to seize and detain letters upon evidence satisfactory to himself, and that his action will not be reviewed by the court in doubtful cases, and, again (p. 515), also referring to the McAnnulty case—

That the party injured has a right to invoke the judicial power of the Government whenever his property rights have been invaded by the exercise of such power, was settled by this court in Noble *v.* Union River Logging Railroad (147 U. S., 165), as well as in the McAnnulty case. But, as already indicated, it would practically arrest the executive arm of the Government if the heads of departments were required to obtain the sanction of the courts upon the multifarious questions arising in their departments before action were taken in any matter which might involve the temporary disposition of private property.

In the case at bar, not only the principal obligor of the bond departed from the jurisdiction and became a citizen of a foreign country, but the liquor in question had been seized by the Government upon an information for an infraction of the internal-revenue laws; had been actually adjudged forfeited, and then released to a different party than the original distiller, and the surety on the bond had notified the commissioner that it was no longer bound on his bond. In view of these complications, the Commissioner of Internal Revenue, in the exercise of the discretion vested in him by the terms of the statute, required a new bond, and it does not appear to this court that the exercise of his discretion was so palpably wrong and such an invasion of the property rights of the complainant as to require an interference by a court with the action of the Commissioner of Internal Revenue. While an ultimate recourse to the judiciary may be reserved in all cases where the action of the officer is an invasion of property rights and is in excess of his authority, or palpably and clearly erroneous, or an abuse of the discretion lodged in him, yet the case at bar does not come within these categories.

It follows from this conclusion that the judge below erred in sustaining the bill upon the facts found, and that his judgment must be *reversed*.

PRITCHARD, Circuit Judge, dissents.

(T. D. 1761.)

Opium—Ruling and charge of court.

1. INDICTMENT.

The defendant was indicted under the act of October 1, 1890, for manufacturing opium for smoking purposes without compliance with the statute.

2. ACT OF OCTOBER 1, 1890, STILL IN FORCE.

The act of February 9, 1909, prohibiting the importation and use of opium for other than medicinal purposes, did not repeal the act of October 1, 1890.

3. MANUFACTURE OF SMOKING OPIUM.

The soaking of crude opium, the production of a solution of gum opium, and the reduction of said solution of gum opium and the reduction of said solution to a sirupy, sticky substance, constitute manufacture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE.
Washington, D. C., February 28, 1912.

The appended ruling of the United States District Court for the Southern District of New York and charge to the jury in the case of the United States *v.* Marks, are published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

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Ruling of the United States District Court, Southern District of New York, and charge to the jury in the case of United States v. *Marks.*

RULING.

The court, preliminary to the charge, heard arguments on motion to dismiss the indictment.

The court said: I am not aware of any expert definition of the word "manufacture" in connection with the preparation of opium. Consequently, manufacture is to be interpreted according to the ordinary legal meaning, and I can not embark on any general definition of the word manufacture in the legal use, because it would be a waste of time and would involve us in all kinds of contradictions from various decided cases. There is not a word in the English language that has had more attempt at definition made upon it. I shall content myself with this: That the process which has been repeatedly described in this court in this case, namely, the soaking of crude opium, the production of a solution of gum opium and the reduction of said solution to a sirupy, sticky substance, constitute manufacture. I will stand on that proposition.

Further, as to repeal of the act of October 1, 1890, by subsequent legislation, the court said: It is obviously true, that there has been no specific repeal of any of the statutes in vogue. And it is one of the fundamental principles of statutory interpretation that it must not be repealed by implication. And while the scheme of justification of the statute is perhaps very artificial, it is no more artificial than any scheme by which or any train of reasoning by which we try to deal with reason.

As the statutes stand to-day, on their face, the manufacture of smoking opium is permitted under very strict regulations. One need only read those regulations to see that they are nearly, if not quite prohibitory; under the statutes, as they stand to-day, no opium can be brought into the United States except for medicinal purposes. But there is nothing to show that opium brought in for medicinal purposes is only suitable for medicinal purposes, may not be when freed from import duties turned to further account than medicinal purposes. The illegality consists in bringing it in, but there is no prescribed illegality in diverting it from medicinal purposes after it is once in.

Therefore, I rule that the scheme that is consistent with the act under which this indictment rests has not been repealed. Your motion is denied, and you will go to the jury.

CHARGE TO THE JURY.

HOUGH, *Judge*: Gentlemen: Concerning the general rules of law, I shall say no more at this stage of the term except to remind you that it is now your duty to ascertain whatever the Government has succeeded in showing the truth of this indictment beyond a reasonable doubt. That is, a doubt founded upon reason and based on the evidence, which you have listened to.

I may also say, in corroboration of what has been advanced here by counsel, that the various motions and demands for rulings which have been made to the court during the progress of the trial are not evidence, and are not to be considered by the jury, and are merely a portion of what may be called legal process.

Now, the statute for your purposes is very plain. A tax of $10 per pound shall be levied upon all opium manufactured in the United States for smoking purposes, and no person shall engage in such manufacture who is not a citizen of the United States and has not given the bond required by the Commissioner of Internal Revenue. Then the statute goes on to state the substance of very numerous and meticulous rules surrounding the manufacture of smoking opium to be laid down by the Commissioner of Internal Revenue.

You have heard the statement that crude opium in this market—that is, in the market of the United States—is worth from $9 to $10 a pound. So that, on the face of this statute nobody can engage in the manufacture of smoking opium without

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paying an additional tax of $10 for the privilege of making smoking opium under the extremely drastic conditions of being watched and making a return and report of everything that is done, placing a sign on the premises, and generally being under the supervision of the officers of the internal revenue. Every citizen can see that such regulations mark the suspicion, we may say, the dislike with which this business is surrounded, and which go to render it difficult to carry it on.

The defendant, Marks, admitted that he had not complied with these regulations; his premises bore no sign. The place that you have heard so much of was not a regular lawfully licensed establishment for the manufacture of smoking opium. The accusation is that it was an illicit and unlawful and wrongful establishment for the manufacture among other things of smoking opium.

Now the defense, briefly stated, and I think fairly stated, is this: Marks was not engaged in manufacturing smoking opium—he was engaged in manufacturing *Opicurine*. There is no denial—indeed there is every assertion that Opicurine was manufactured upon these premises; therefore he is not guilty. Now, there is one very narrow view that might be taken of this on this evidence. It is testified without contradiction that Marks at the period of his arrest said that he personally used the smoking apparatus which you have had described to you as a layout, and that he used in that smoking apparatus a kind of preparation which was found on the premises, of which you have samples before you.

Now, I do not charge you that Marks's own use of smoking what he made himself is a warrant for conviction. I am going to send this case to you on broader grounds, which grounds I demand that you consider with the greatest care.

The question is, Was Marks manufacturing opium for smoking purposes? Now, that is the language of the statute. What it means to the ears of any plain man is, Was he making smoking opium *for profit* therefrom as smoking opium? Now let us inquire what it was that was confessedly done on these premises. Here I have recourse to the testimony of Young. He says he is a chemist, and he describes the process of making Opicurine. He said, first, he made an aqueous solution of opium by macerating the gum with warm water. Now, there are some long words in that, but macerating the gum with warm water seems to me—though you will judge of it—means the same thing as cutting it in pieces and putting it to soak. The aqueous solution of opium seemed to me to mean the result of that soaking, and that is the first step, as described to you by Mr. Wallace, in the manufacture of what he called smoking opium.

The second of Young's processes is the filtering of the solution so formed through cheesecloth and paper—I do not remember anything about paper in the testimony of the witnesses for the prosecution—but the filtering through cheesecloth, in order to remove foreign substances found therein (twigs, poppy leaves, etc.), is also what Wallace described.

The next step was to evaporate the aqueous solution by boiling, so as to produce Exhibit 3, which stands before you—and that Exhibit 3 is said by numerous witnesses who you have heard to be smoking opium, Then the contents of the bottle of Opicurine were formed by putting in more water; the result is before you. You will judge of it. Opicurine may be fairly described, consistently with the language of the prosecution or of the defendant's witness, as dilute smoking opium. All this was confessedly done on Young's evidence. So that, whichever set of witnesses you consider, whether you look at the matter with the one witness for the defense or with those for the prosecution, you get to the same result. There it is, the exhibit which is before you, containing opium, strong in morphine, as is said by Young, but capable by all accounts of being used for smoking purposes, and you have a practical exhibition of it given to you by Mr. Wallace. Now, how are you going to consider that matter? Turn to the other silent witnesses which are shown to you in such large numbers, and let us ask these questions. The defense can not possibly object to them as questions.

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How does this evidence show that smoking opium is vended or offered for sale? I have heard no denial of the assertion that it is commonly vended or offered for sale in receptacles, for which there appear to be no other than the Chinese names "hop toys" and "lishi shells," and both of these articles have been produced to you in what seems to me to be considerable numbers, as having been found on the premises in One hundred and thirteenth Street. The question is a fair one, and has got to be asked and you must answer it, What have hop toys and lishi shells to do with the manufacture of Opicurine?

Now, the next question is equally fair—how is smoking opium consumed? Apparently, it is admitted that it is consumed mostly in pipes of peculiar shape, requiring rather considerable care and ingenuity to produce the smoke or render inhalation possible. So far as I can make out from this evidence, the ordinary tobacco pipe, with which probably most of us are more or less familiar, would hardly serve the purpose.

What has that got to do with the manufacture of Opicurine? Now, gentlemen, if you believe on this evidence, if you are satisfied—satisfied to that degree of certitude which would lead you to act in the more important affairs of your own life, that, assuming that there was Opicurine made on these premises there was also made on these premises and by the defendant, and under his supervision and directions, that product [indicates Exhibit 3] or one like it, for the purposes of being smoked, then the defendant is guilty.

If you do not believe that, then he is not. You may consider the case.

Mr. JERSAWITZ (defense). I ask your honor to charge the jury that there is no evidence in this case tending to establish or establishing the fact that this defendant sold any of this smoking opium or derived any profit from it.

The COURT. There is no direct evidence that any smoking opium was sold by the defendant.

NOTE.—The defendant was sentenced to serve one year in prison and to pay a fine of $500.

(T. D. 1762.)

Opium—Charge of court.

1. MEANING OF THE WORD "MANUFACTURE."

The simple process of boiling crude opium, preceded by soaking, is "manufacturing" under the act.

2. MANUFACTURE FOR PERSONAL USE.

One who manufactures opium for smoking purposes, though it be solely for his own use, is liable to conviction under the act of October 1, 1890.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 29, 1912.

The appended charge to the jury by the United States District Court for the Southern District of New York, in the case of the United States *v.* Lee Sing, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

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Case of United States v. Lee Sing, charged with violation of the internal-revenue law relative to the manufacture of smoking opium.

CHARGE TO JURY.

HOUGH, *Judge:* Gentlemen: This case affords no direct evidence that the defendant did more than prepare what might be described as his own family opium for smoking purposes. So, the first question which I will consider briefly is this: What is the law as to manufacturing smoking opium for one's own use?

Now, the object of the law is to regulate in the most drastic manner the business of making smoking opium; to have it watched under the supervision of the Commissioner of Internal Revenue; to levy upon it a very heavy—very nearly a prohibitory—tax; to compel a person who engages in that occupation to put up a sign in front of his place, and generally to keep this business in the public eye in a very full way. And it is a matter of common knowledge that these measures, though distasteful to American citizens when applied to most businesses, were devised by Congress for the purpose of attracting attention to a business which is considered to be as the root of a great evil.

Now, the process of making or preparing smoking opium has been described to you, and certainly any one can say that it is most simple. Anyone apparently can do it. Now, if every man can do it for himself it becomes as foolish to claim the right to do it as it would be to claim the right—if such a right could be claimed, which it can not—for each citizen to make his own whisky.

Therefore, as a matter of law, I advise you that if the defendant did "manufacture opium for smoking purposes"—that is the language of the act—even if he manufactured it only for himself and his wife, he violated the law, though certainly he did not violate it so seriously as one would by manufacturing for sale and wide distribution. That is a difference in degree, but it is not a difference in kind.

So, we come to consider the meaning of the word "manufacture." I do not think it will do to say, as has been said, that crude opium—the ball or lump which has been explained to you, being the impure and very dirty, hardened juice of the poppy plant, collected, it is said, in Turkey—it will not do to say that that is smoking opium. It would be just as erroneous to say that the tobacco plant growing in the field is smoking tobacco. Both of these products—the hard, impure opium ball and the ripe tobacco plant standing in the fields—require a preparation to make them ready for smoking; and that process of preparation is, in my judgment, manufacturing.

I express this opinion as a matter of law, because the evidence is clear that there is not now, and, so far as we know, there never was but one process of preparing or making out of crude opium the smoking opium of which you have heard and which you have seen. Therefore, we must assume, and I do assume and advise you accordingly, that when Congress made the law under which this proceeding is brought for the regulation of the manufacture of smoking opium, Congress spoke of and meant to refer to that simple process of boiling, preceded by soaking, of which you have heard. That process was called manufacturing by Congress, when it passed the act, and when Congress called it a manufacture it becomes a manufacturing for our purposes, the definition, whether we agree with the definition or not, being one within the power of Congress, within very wide limits.

Now, there has been no evidence contradicting the fact, as has been claimed to you by counsel for the defendant, that all this defendant did was to prepare smoking opium for his own use and that of his wife. Now, if this were a civil proceeding—I always believe in being very frank with a jury—the evidence is such that I should be compelled to advise you peremptorily that the defendant did manufacture smoking opium. But in a criminal case you must pass upon that. It is not for you to say, except by recommendation to the court—that is, if you observe your oath—what you regard as the degree of guilt. But it is true that you and none others must be satisfied beyond a reasonable doubt that the defendant is guilty.

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In this case, if the evidence has satisfied you beyond a reasonable doubt that the defendant did manufacture smoking opium on the premises at 13 Pell Street, then you must find him guilty.

If you can not find that by the evidence with that degree of certainty which would lead you to act in the more important affairs of your own life, then you should find him not guilty.

I have nothing further to say.

NOTE.—The defendant was convicted, and was sentenced to serve two months in jail.

(T. D. 1763.)

Excise tax on corporations.

Banks paying taxes assessed against their stockholders should not deduct the amounts so paid from gross income in making their returns for the special excise tax on corporations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 22, 1912.

SIR: This office is in receipt of a letter from Revenue Agent Bender, in which it is stated with respect to the special excise tax on corporations that it is believed that the banks of Texas are making deductions under the heading of item 7 of the amount of tax assessed against their stockholders because of their ownership of shares of stock issued by the bank, and that this is the practice of the banks throughout the State of Texas.

With regard to this matter, you are informed that the practice of banks paying the tax assessed against their stockholders has been considered in connection with the New York, Ohio, and Louisiana State laws, and it was held that these deductions were not allowable ones in making the returns of annual net income for the special excise tax on corporations.

The extracts submitted from the New York law, which were considered, are as follows:

13. STOCKHOLDERS OF BANK TAXABLE ON SHARES.—The stockholders of every bank or banking association organized under the authority of this State, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

[From paragraph 24.]

A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any bank or banking association failing to pay the

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said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax.

The first extract clearly shows that the taxes are not assessed against the banking corporations, but it is a tax assessed against the individual stockholder, and that the amount of the tax so assessed is based on the value of the shares of stock owned by each individual stockholder. It would make no difference, however, so long as the tax was assessed against the holders of the stock.

The second paragraph also shows clearly that the tax is assessed against the owners of the stock and not against the banking corporation, because of its provision that it shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares and to pay the same to the proper officers. This office holds, therefore, that such taxes being assessed against the individual stockholder is an indebtedness of the individual stockholder, and if, in order to avoid the trouble or the annoyance of the collection of such taxes a banking corporation shall choose to pay the same for their shareholders the amount so paid does not constitute a proper deduction from its gross income in the return for the special excise tax on corporations. The fact that the banking corporation is required in certain States to collect the amount due from each individual stockholder does not make the tax due a debt of the corporation, as in such cases such requirements are usually connected with the provision that the corporation may or shall collect the tax due upon its share of stock from the several owners of such shares, and the failure of any corporation to so collect the amount can not be considered a sufficient reason for deducting the amount paid from its gross income. .

The same holding has been made for the banks of Ohio and Louisiana, as stated above, and it was considered in each that if the banks choose to pay the tax due on the shares of stock held by the individual stockholders and neglects or refuses to collect from the individual stockholders the amounts assessed against their shares of stock it is considered that the amount of tax paid is in fact an additional dividend paid to the stockholders to the extent of the amount of tax so paid.

You will, therefore, notify each bank in your district of their liability in this matter and request each one to file amended returns for 1909, 1910, and 1911, in order that the proper additional assessments may be made, if in the returns on file they have deducted any taxes so paid. See item 63 of T. D. 1742.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. P. B. HUNT,
Collector, Fourth District, Dallas, Tex.

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(T. D. 1764.)

Sureties.

No objection to collectors notifying sureties of assessments made against the principals on the bonds on which they are sureties.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 8, 1912.

SIR: This office is in receipt of your letter of the 28th ultimo requesting that a regulation be promulgated requiring collectors to notify sureties when default is made in payment of assessments.

The reasons stated by you why such information would probably be valuable to the sureties and result in benefit to the United States appear cogent, but this office does not find warrant or authority of law for making such regulation or requiring collectors to issue such notice. However, this office would offer no objection to collectors complying with a request from sureties for such information, which would doubtless be furnished them on request by collectors, provided that it is clearly understood that failure on the part of the collector to furnish such notice of assessment either with or without specific request therefor shall not in any manner affect the liability of the surety for the amount which may be due under his bond in case of failure of the principal to pay the assessment.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

r. ——— ———, *Washington, D. C.*

(T. D. 1765.)

Smoking opium—Charge of court.

Defining what constitutes the manufacture of smoking opium.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 12, 1912.

The appended charge of the District Court of the United States for the Eastern District of Pennsylvania in the case of United States *v.* Nicholas Waldman, defendant, being charged with manufacturing smoking opium in violation of section 37, act of October 1, 1890, is published for the information of internal-revenue officers and others concerned.

It may be stated that the jury in the above action returned a verdict of "guilty."

ROYAL E. CABELL, *Commissioner.*

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DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.
No. 30.

United States v. *Waldman.*

CHARGE OF THE COURT.

McPHERSON, *Judge:* Gentlemen of the jury: This case depends on a narrow question. There is no law, Federal or State, that makes it a crime to smoke opium; and there is no law, Federal or State, that makes it a crime to manufacture opium for some purposes. The precise offense which is charged in this case—and that is an offense under a Federal statute—is to manufacture opium for smoking purposes. It is no crime to use opium that has already been manufactured. Therefore, if all that this man did was to procure opium that had already been manufactured and to smoke it, he has not been guilty of any offense and is entitled to be acquitted. Upon the other hand, if he did manufacture opium for smoking purposes, then he is guilty, and, of course, must be convicted.

Now the Federal statute lays several restrictions upon the manufacture of opium for smoking purposes. I said a moment ago that it could not be manufactured for smoking purposes under this statute, but this is not quite correct; it can be manufactured for such purposes under certain restrictions. There is a heavy tax upon it, and a bond must be given, and there are various other regulations which must be complied with, and the manufacturer must also be a citizen of the United States. Now this defendant is a citizen, but he has not given bond, and therefore if he manufactured opium he has offended against this statute.

That brings me back to the point I stated just a moment ago. Did he manufacture opium? Now you will see the question is exactly as it has been stated to you, in effect, by counsel on both sides. Did he do no more than buy opium already prepared for smoking and moisten it, so that it might be capable of being rolled into pills and smoked? If that is all he did it is not contended that that was a process of manufacture. Or did he take the refuse matter—"Yenshee" as it has been called—what is left over after a pipe has been used for the first time, and add to it a small portion, or some portion, of the manufactured material, and then reduce the mixture by the process of boiling and evaporation into a condition where it could be used a second time? If he did that, he manufactured. I do not profess to give you an exhaustive definition of the word, but "manufacture" consists, in part at all events, in taking material and arranging or rearranging it, by manual or mechanical skill, by the application of machinery, or by calling in chemical laws. The product is a manufactured product; whether the process be simple or complicated, it is nevertheless a process of manufacture.

This act of Congress has made it an offense for any person to manufacture, and therefore if the defendant manufactured it for his own use, he comes within the letter of the statute. It is not necessary that he should have manufactured it for the purpose of sale or for profit; but, I repeat, if he manufactured it for his own use, it comes precisely within the letter of the statute.

I do not know that I can do more to bring your minds to the exact point in the case which is just this—which did this man do of the two things that have been spoken of here in the evidence? Did he simply use a wet cloth for the purpose of moistening the opium that had already been prepared? If that is all he did, he has been guilty of no offense. Did he take the refuse material that he had previously used, mix it with a portion of smoking opium, and then reduce the mass thus composed to a substance that could be used again? If he did that he manufactured smoking opium. If he did not, he is guilty of no offense.

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(T. D. 1766.)

Tax imposed on white phosphorus matches—Act of April 9, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1912.

To collectors and other officers of internal revenue:

The appended act of Congress, approved April 9, 1912, is published for the information of all concerned.

ROYAL E. CABELL, *Commissioner.*

[PUBLIC No. 118—H. R. 20842.]

AN ACT To provide for a tax upon white phosphorous matches, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this act the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

SEC. 2. That every manufacturer of white phosphorus matches shall register with the collector of internal revenue of the district his name or style, place of manufactory, and the place where such business is to be carried on; and a failure to register as herein provided and required shall subject such person to a penalty of not more than five hundred dollars. Every manufacturer of white phosphorus matches shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns in relation to the business, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. The bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue and in the penal sum of not less than one thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

SEC. 3. That all white phosphorus matches shall be packed by the manufacturer thereof in packages containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches each, which shall then be packed by the manufacturer in packages containing not less than fourteen thousand four hundred matches, and upon white phosphorus matches manufactured, sold, or removed there shall be levied and collected a tax at the rate of two cents per one hundred matches, which shall be represented by adhesive stamps, and this tax shall be paid by the manufacturer thereof, who shall affix to every package containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches such stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used. Every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this section without so effectually canceling such stamp shall forfeit the sum of fifty dollars for every stamp in respect to which such offense is committed.

SEC. 4. That every manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute white phosphorus matches without there

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being affixed thereto an adhesive stamp, denoting the tax required by this act, effectually canceled as provided by the preceding section, shall for each offense be fined not more than one thousand dollars and be imprisoned not more than two years. Every manufacturer of matches who, to evade the tax chargeable thereon, or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, shall for each offense be fined not more than one thousand dollars and be imprisoned not more than two years, or both, and all such matches shall be forfeited.

SEC. 5. That every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall for each offense be fined not more than one thousand dollars or be imprisoned not more than two years, or both.

SEC. 6. That every person who removes, defaces, or causes or permits or suffers the removal or defacement of any such stamp, or who uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this act, shall for every such package in respect to which any such offense is committed be fined fifty dollars, and all such matches shall also be forfeited.

SEC. 7. That every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this act, or any part thereof, shall forfeit the factory and manufacturing apparatus used by him and all the white phosphorus matches and all raw material for the production of white phosphorus matches found in the factory and on the factory premises, or owned by him, and shall be fined not more than five thousand dollars or be imprisoned not more than three years, or both. All packages of white phosphorus matches subject to tax under this act that shall be found without stamps as herein provided shall be forfeited to the United States.

SEC. 8. That the Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps for payment of the tax on white phosphorus matches provided for by this act. Such stamps shall be furnished to collectors, who shall sell the same only to duly qualified manufacturers. Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer. All the provisions and penalties of existing laws governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenue are hereby made to apply to stamps provided for by this act.

SEC. 9. That whenever any manufacturer of white phosphorus matches sells or removes any white phosphorus matches without the use of the stamps required by this act, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector, who shall collect the same according to law. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

SEC. 10. That on and after January first, nineteen hundred and thirteen, white phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary of

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the Treasury that they are not white phosphorus matches. The Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of the provisions of this section.

SEC. 11. That after January first, nineteen hundred and fourteen, it shall be unlawful to export from the United States any white phosphorus matches. Any person guilty of violation of this section shall be fined not less than one thousand dollars and not more than five thousand dollars, and any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary of the Treasury, who shall have power to issue such regulations to customs officers as are necessary to the enforcement of this section.

SEC. 12. That every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Commissioner of Internal Revenue shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under section two of this Act. Every such manufacturer who omits to mark, brand, affix, stamp, or print such factory number on such package shall be fined not more than fifty dollars for each package in respect of which such offense is committed. Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him, a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "Notice.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases." Every manufacturer of white phosphorus matches who neglects to affix such label to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than fifty dollars for each package in respect of which such offense is committed.

SEC. 13. That if any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything by this Act prohibited, if there be no specific penalty or punishment imposed by any other section of this Act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined one thousand dollars for each offense, and all the white phosphorus matches owned by him or in which he has any interest as owner shall be forfeited to the United States.

SEC. 14. That all fines, penalties, and forfeitures imposed by this act may be recovered in any court of competent jurisdiction.

SEC. 15. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful regulations for the carrying into effect of this act.

SEC. 16. That sections thirty-one hundred and sixty-four to thirty-one hundred and seventy-seven, thirty-one hundred and seventy-nine to thirty-two hundred and forty-three, thirty-three hundred and forty-six as amended, thirty-four hundred and twenty-nine as amended, thirty-four hundred and forty-five to thirty-four hundred and forty-eight, thirty-four hundred and fifty to thirty-four hundred and sixty-three, all inclusive, of the Revised Statutes of the United States, and all other provisions and penalties of existing law relating to internal revenue so far as applicable, are hereby made to extend to and include and apply to the taxes imposed by this act and to the articles upon which and to the persons upon whom they are imposed.

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SEC. 17. That this act shall take effect on July first, nineteen hundred and thirteen, except as previously provided in this act; and except as to its application to the sale or removal of white phosphorus matches by the manufacturers, as to which it shall take effect on January first, nineteen hundred and fifteen.

Approved, April 9, 1912.

(T. D. 1767.)

Supplemental regulations relating to the withdrawal from bond, free of tax, of alcohol for use of the United States.

[Circular No. 21—Int. Rev. No. 744.]

TREASURY DEPARTMENT, *April 15, 1912.*

To facilitate the withdrawal from bonded warehouse, under the provisions of section 3464, Revised Statutes, of alcohol purchased for use of the United States, where under the contract, the alcohol is to be delivered from time to time and in such quantities as occasion may require, requisition for such alcohol may be made hereafter in the following form:

Requisition No.—.
Contract No.—.

REQUISITION FOR WITHDRAWAL OF ALCOHOL, FREE OF TAX, UNDER THE PROVISIONS OF SECTION 3464, REVISED STATUTES, FOR USE OF THE UNITED STATES.

——— DEPARTMENT,
———, 191—.

TO THE SECRETARY OF THE TREASURY:

Requisition is hereby made, under the provisions of section 3464, Revised Statutes, for ——— wine gallons and ——— taxable gallons of alcohol now deposited or to be hereafter deposited in internal-revenue bonded warehouses and to be withdrawn therefrom, free of tax, at such times and in such quantities as occasion may require.

The alcohol above specified has been purchased or contracted for by this department for use of the United States at a price, not including the tax thereon, or any part thereof, and is to be delivered to [1] ——— ———, or either of them, for shipment to the inspector of powder at [2] ——— ———.

——— ———
Secretary of the ——— Department.

2. After such requisition has been filed, applications for withdrawal of the alcohol, in specified lots, may be made by the contractor or distiller named in the requisition. If a general transportation and delivery bond (prescribed in Department Circular No. 50 of Apr. 11, 1905) has been given, applications thereunder may be filed directly with the Commissioner of Internal Revenue; otherwise, the application in each case should be filed with the collector of the district in

[1] Here state name of contractor or distiller. [2] Here state place where alcohol is to be delivered.

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which the distillery warehouse is located, together with the required bond, Form 544, in duplicate. Upon approval of such bond the collector will at once forward the duplicate, with the application, to the commissioner. The application, in either case stated, will be in the following form:

FORM —.

APPLICATION FOR WITHDRAWAL OF ALCOHOL, FREE OF TAX, UNDER THE PROVISIONS OF SECTION 3464, REVISED STATUTES, FOR USE OF THE UNITED STATES.

——— ———,
——— 191—.

Requisition No. —.
Contract No.—.

TO THE SECRETARY OF THE TREASURY:

Pursuant to a requisition heretofore made by the Secretary of ——— Department, under the provisions of section 3464, Revised Statutes, application is hereby made for withdrawal from the distillery warehouse No. — of ——— in the ——— district of ———, free of tax, of the following-described alcohol deposited or to be deposited in said warehouse on or about the ——— day of ——— 191—.

No. of pkgs or tanks.	Serial Nos. pkgs or tanks.	Serial Nos. W. H. stamps.	Wine gallons.	Degree of proof.	Tax gallons.

The above-described alcohol is intended for use of the United States and will be consigned to ——— ——— at ———.

——— ———
Contractor or distiller.

3. Upon the receipt of such application a permit for withdrawal in the usual form will be issued. In such cases both the original and duplicate permit will be forwarded to the collector, who will retain the original on his files, and forward the duplicate (with signed receipt on reverse side) with his bonded account on which credit for the withdrawal made is taken.

4. Entry for withdrawal must in each case be filed by the distiller on modified Form 179, as required by mimeograph circular 812; and all subsequent proceedings, in connection with the regauge, withdrawal, and delivery of such alcohol, and the receipt of the consignee, will be the same as provided in Department Circular No. 104 of December 23, 1904.

Until blanks of the forms herein prescribed are furnished, typewritten forms may be used.

FRANKLIN MACVEAGH, *Secretary.*

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(T. D. 1768.)

Registry pouches—Checking contents.

Rules to be observed in the future in handling T-lock registry mail pouches containing internal-revenue stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1912.

To collectors of internal revenue:

Attention is directed to the following rules, to be strictly observed in the future in handling T-lock registry mail pouches, opening the same, checking their contents, and receipting for such contents:

1. All pouches containing internal-revenue stamps are to be opened, their contents checked, and proper receipts signed and forwarded as promptly as possible. Any delay must be fully explained in writing. The collector will require two employees of his office to carefully note the lock number, rotary number, open the pouch, compare the rotary number with the number recorded on the registry bill inclosed in the pouch, and carefully check the contents of each pouch as opened with the registry bill therein. Where the contents agree with the registry bill the two employees will then immediately affix their initials to the registry bill and the receipt will be signed by the collector. The collector's signature may be affixed with a facsimile stamp, provided he inserts his initials in ink beneath the facsimile.

2. In case of a discrepancy between the registry bill (Form 7755) and the contents of any pouch, the fact should be immediately reported by the two examining employees to the collector, or to the person in charge of the office, who will make an immediate investigation, and if the discrepancy be clearly established, such information should be immediately telegraphed to the Commissioner of Internal Revenue, the telegram to give the number of the lock, rotary number upon arrival of the pouch, number of registry bill, nature and amount of discrepancy, and any other details necessary to be conveyed. This should be followed by a full report by mail, giving, in addition to the facts already sent by wire, the names of the employees who opened the pouch and the exact day and hour that the pouch was received and opened.

3. Where a shipment is made direct to a stamp deputy collector, his assistant, where one is employed, will join him in checking the pouches and receipting for the contents thereof. In case of a discrepancy the stamp deputy collector will, as far as possible, follow the course outlined in paragraph No. 2.

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4. All pouches should be opened and the contents checked as soon as possible after their receipt in the office of the collector, and receipts should in every case be mailed to the Commissioner of Internal Revenue on the day the pouches are opened.

This subject is considered one of extreme importance.

You will please acknowledge receipt of this circular.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1769.)

Zanol.

Special tax not required for use in compounding for personal use and not for sale.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 20, 1912.

SIR: This office is in receipt of your letter of the 18th instant, transmitting a sample of "zanol extract"; and in reply you are advised that many inquiries have been received relative to this compound from the tenor of which it is manifest that the widely distributed advertising matter is misleading.

In the pamphlet sent out it is stated:

> You can make in the privacy of your own home any standard liquor or cordial.
> You require no distilling or brewing apparatus.
> No license is required in any State, county, or city of this country for the making of liquor at home for personal use, nor the selling of "zanol." * * * It must be diluted to a great extent before it can be made drinkable.

From the correspondence received it appears that the public believes that liquors can be made by diluting "zanol extract" with water, but according to the instructions upon the packages "zanol extract," which is a highly concentrated flavoring extract, must be added to tax-paid alcohol or spirits reduced to potable proof.

Of course, such compounding for personal use and not for sale does not involve special-tax liability as rectifier; and, as the extract is not potable in the condition as put out by the manufacturers, no special tax is required for its sale in the original manufacturers' package. Special tax would, however, be required for the preparation for sale of a liquor in accordance with the directions for use upon the bottle.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. H. B. BURGH,
Revenue Agent, St. Louis, Mo.

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(T. D. 1770.)

Smoking opium—Opinion of the court.

1. "MANUFACTURE OF SMOKING OPIUM" DEFINED.

Defining what constitutes the manufacture of smoking opium, holding that the preparation of diluted smoking opium or "opicurine" constitutes manufacture.

2. ACT OF OCTOBER 1, 1890, NOT REPEALED BY ACT OF FEBRUARY 9, 1909.

The act of October 1, 1890, relative to the manufacture of smoking opium, is not repealed by the act of February 9, 1909, inasmuch as the latter act is not repugnant to the act of October 1, 1890, but relates to the importation of opium.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 30, 1912.

The appended opinion of the United States Circuit Court of Appeals, Second Circuit, in the case of Isaac Marks, plaintiff in error, *v.* United States, defendant in error, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Isaac Marks, Plaintiff in Error, v. *United States, Defendant in Error.*

WRIT OF ERROR to review a judgment of the District Court, Southern District of New York, entered upon the verdict of a jury finding the plaintiff in error (hereinafter called the defendant) guilty of the violation of sections 36 and 37 of the act of October 1, 1890 (26 Stat., 567, 620), relating to the manufacture of smoking opium.

Before LACOMBE, COXE, and NOYES, Circuit Judges.

NOYES, *Circuit Judge:* The indictment charges violations of the act of 1890, relating to the manufacture of smoking opium. The first count avers that the defendant engaged in such manufacture without giving the required bond. The second alleges that he did so without paying the required tax. The third charges that he did so without obeying the regulations governing the conduct of the business.

Assuming that the process through which the defendant put the opium amounted to "manufacture" within the statute, it is clear that the evidence warranted the jury in finding the defendant guilty of its violation. He did not give any bond, pay any tax, or obey any of the regulations for the conduct of the business of manufacturing smoking opium. The testimony showed that both crude opium and smoking opium were found upon his premises. An opium-smoking outfit was also found and the various receptacles in which it is the custom to retail smoking opium. Apparatus for heating opium was also found and utensils for treating it. The jury may well have determined that the so-called "opicurine" was merely diluted smoking opium.

The first question, then, is whether the acts of the defendant in converting the crude opium product into the smoking opium did amount to its *manufacture* within the meaning of the act.

The purpose of the statute is to tax and regulate the manufacture of smoking opium, and it applies manifestly to any process by which the crude opium is converted into a product fit for smoking. Any such process constitutes manufacture within such a limited statute, even if it might not amount to manufacture under a statute of general application. The contrary is the equivalent of saying that the manufacture of smoking opium can not be regulated because it is not a manufactured product. If there had been a statute in the Anheuser-Busch case (207 U. S., 556), specifically allowing drawbacks in the case of manufactured bottle corks, it is by no means certain, that within the meaning of *such* a statute, the process there described would not have been held to amount to manufacture. Moreover, while in that case it was properly said that the cork after the process was still a cork, it is apparent here that the dry and hard crude

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opium product was substantially transformed in its nature by the heating and other treatment which it received before it became the molasses-like substance fit for smoking. We are of the opinion that the process of the defendant amounted to manufacture within the statute in question.

But the defendant contends that this conclusion does not end the case and urges that the statute under which the indictment is framed is not in force; that is to say, he claims that the act of 1890 was repealed in whole or part by the act of 1909, which relates to the importation of opium. But the later statute does not in terms repeal the former, and presumably both stand if there is anything for them to operate upon. The statute of 1909 must be shown to be repugnant to the act of 1890 to repeal it or any portion of it.

While the act of 1909 prohibits the importation of opium except for medicinal purposes it does not make it a criminal offense to divert it for other purposes, unless the party so using it knows "the same to have been imported contrary to law," and it does not apply to opium imported before its enactment. Obviously also it has nothing to do with domestic-grown opium.

The act of 1890 then applies clearly to the manufacture of opium imported after 1909 where the manufacturer has no knowledge that it was unlawfully imported, to the manufacture of opium imported into this country prior to 1909, and to opium grown in this country. In all these cases the act of 1909 has no application. If the act of 1890 is inapplicable, the manufacture of opium of these classes can be carried on with impunity.

Moreover, we think that the act of 1890 should have a still broader application. In our opinion it applies to every case where, as a matter of fact, a man engages in the manufacture of smoking opium in the United States, regardless of whether it was imported before or after 1909 and regardless of his knowledge concerning its importation. If the defendant desired to engage in the manufacture of smoking opium he was obliged to do it according to law, and if he did not do so he broke the statute of 1890, notwithstanding that in case he knew that the opium he used had been imported contrary to law he might also by receiving the same have violated the statute of 1909.

The statement is made in the defendant's brief in support of its argument that the act of 1890 is inoperative that the Treasury Department "now refuses to accept the bonds of opium manufacturers, as provided by the act of 1890." We think this statement erroneous. The regulations of the Treasury Department of July 1, 1911, to which our attention has been directed, provide for the giving of bonds. Moreover, we do not see how a departmental refusal to accept the bonds prescribed by the statute would constitute any authority for the defendant to violate the statute. The Treasury Department can not repeal an act of Congress.

The judgment is affirmed.

(T. D. 1771.)

Special excise tax on corporations.

Instructions relative to the enforcement of T. D. 1763 of March 22, 1912, by collectors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 30, 1912.

SIR: In reply to your letter of the 27th instant, in which you inquire as to how banks may show the additional taxes due in accordance with T. D. 1763, it is suggested that in lieu of requiring an amended return or returns the requirement be that a supplemental return showing the amounts deducted during the years 1909, 1910, and 1911 for taxes paid on the capital stock shall be filed by each corporation from whom an additional tax would be due because of these deductions. The requirement that an amended return be filed would neces-

sarily mean that the original return be amended, but the same objection could be attained and the additional tax collected for the three years on a supplemental return as indicated above.

This letter will be printed in TREASURY DECISIONS for the information of all collectors who have not yet secured the additional taxes due from banking corporations in accordance with T. D. 1763.

Respectfully, ROYAL E. CABELL, *Commissioner.*

COLLECTOR OF INTERNAL REVENUE,
Parkersburg, W. Va.

(T. D. 1772.)

Pomace wine.

Extending the provisions of T. D. 1721 and 1724, relative to the manufacture and use of pomace wine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 4, 1912.

To collectors of internal revenue and others concerned:

Pending action of Congress in fixing the status under internal-revenue laws of so-called pomace wine, the provisions of T. D. 1721 of August 30, 1911, and T. D. 1724 of September 11, 1911, relating to the manufacture and use of such wine, are hereby extended so as to continue in force until April 4, 1913. Collectors and other internal-revenue officers will see that the regulations and instructions contained in said decisions are carefully complied with.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1773.)

Special excise tax on corporations—Penalty—Court decision.

1. FIVE PER CENT PENALTY AND INTEREST.
   If assessments are not paid on or before the 30th day of June, a 5 per cent penalty and interest at the rate of 1 per cent per month accrues.
2. NOTICE BY MAIL, PRESUMPTION OF DELIVERY.
   If the notice was mailed to defendant in a franked envelope addressed to him at place of principal office, bearing return address of collector and not returned by the Post Office Department, the presumption is that it was received.
3. JUDGMENT ENTERED.
   Judgment was entered for the tax, penalty, and interest notwithstanding the corporation had been previously dissolved.—See T. D. 1736 (192 Fed. Rep., 223).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 21, 1912.

The appended decision of the United States District Court for the District of New Jersey, in the case of the United States *v.* General Inspection & Loading Co., is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

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UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

United States v. *General Inspection & Loading Co.*

ON trial before the court without a jury.

CROSS, *District Judge:* This cause came before the court in the first instance on demurrers, filed on behalf of the Government, to certain special pleas interposed by the defendant in addition to the general issue. The demurrers were sustained, and no additional or amended pleas having been filed, the plea of the general issue alone remains. The case has been brought to trial before the court without a jury, a jury having been waived, upon a statement of facts agreed upon by the attorneys for the respective parties. With the exception of one point, nothing need be added by the court at this time to what was said in sustaining the demurrers. The additional point now raised is whether or not the penalties for nonpayment of the tax provided by the fifth subdivision of section 38 of the act in question can, under the facts, rightfully be imposed in this case. The subdivision referred to provides that—

all assessments shall be made, and the several corporations, joint-stock companies, or associations, or insurance companies shall be notified of the amount for which they are respectively liable, on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June * * * and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

The statement of facts, so far at it relates to the notices given to and demands made upon the defendant in respect of the taxes in question, is as follows:

That the Commissioner of Internal Revenue, on May 11, 1910, made an assessment of one thousand, seven hundred and thirty-one dollars and seventy-five cents against said defendant upon said return, being an assessment of one per cent of the net income of one hundred seventy-three thousand one hundred seventy-four dollars and sixty-six cents, as shown by said return; and on May nineteenth, one thousand nine hundred and ten, sent by mail a notice of such assessment and demand for payment thereof, addressed to the defendant at the place of the principal office of said defendant in Newark, New Jersey, at the time of dissolution; which said notice was received by the person who was at the time of its dissolution the agent in charge of the principal office of said defendant; that on the thirtieth day of June, one thousand nine hundred and ten, a second notice of said assessment and demand for payment thereof, contained in a franked envelope addressed to the said defendant at the place of its principal office at the time of its dissolution in Newark, New Jersey, and bearing the return address of the said collector, was mailed in the post office at Newark, New Jersey, by the collector of internal revenue for the fifth district of New Jersey, which notice contained a statement that unless payment of said tax so assessed should be made within ten days thereafter, a penalty of five per cent would attach, and interest at the rate of one per cent. per month from the expiration of said ten days. The person who was the agent in charge of the principal office of said defendant at the time of its said dissolution has no record nor recollection of the receipt of this notice and it has not been returned to the said collector by the Post Office Department.

The provision of the statute concerning the imposition of penalties for nonpayment of the tax is given above. The debatable question is whether the notice, as given by the collector on June 30, 1910, was an adequate and sufficient compliance with the law to warrant their exaction. The notice itself complied with the terms of the statute. It was, however, not served personally, but by mail in a franked envelope addressed to the defendant at the place of its principal office at the time of its dissolution, which envelope bore thereon the return address of the collector. The envelope and contents were never returned to the collector by the Post Office Department, and the agent in charge of the principal office of the defendant at the time of its dissolution has no record or recollection of the receipt of said notice. The well-settled presumption is that the letter was received. Rosenthal *v.* Walker (111 U. S., 185, 193). See also the large number of cases therein cited. The presumption thus arising is not overcome by anything appearing in the statement of facts. The receipt of the notice is no

denied. That its receipt was not made a matter of record by the defendant's former agent, or that he had no recollection of its receipt, are insufficient to overcome the presumption, and particularly must this be so when, as in this case, the envelope bore a return notice to the collector, but was never returned.

Furthermore, the third paragraph of the eighth subdivision of section 38 of the act under which the tax was imposed is as follows:

All laws relating to the collection, remission, and refund of internal-revenue taxes so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Section 3184 of the Revised Statutes, relating to the notice and demand pertinent to the collection of internal-revenue taxes, permits notice to be given to the person liable therefor by leaving the same at his dwelling or usual place of business or by sending the same by mail. In the absence of any prescribed method of giving the notice now in question this section is applicable.

Counsel for the defendant contends, however, that notice to the statutory agent in view of the fact that the corporation had previously been dissolved was insufficient and nugatory. His position, however, rests upon a misconception of the facts. The notice was addressed to the *defendant at the place of its principal office* at the time of its dissolution. This was sufficient, particularly as there is an uncontradicted and consequently prevailing presumption that it was received. As neither the tax nor any part of it has been paid, judgment will be entered in favor of the plaintiff and against the defendant as follows:

Amount of tax	$1,731.75
Five per cent penalty	86.59
Interest from July 11, 1910, to Mar. 11, 1912, 20 months, at 1 per cent per month	346.35
	2,164.69

Besides costs of suit to be taxed.

(T. D. 1774.)

Special excise tax on corporations—Returns—Court decision.

1. Returns.

Corporations having a net income of $5,000 or less are not exempt from the requirement that a return be made to the collector of the district in which such corporation has its principal place of business.

2. Departmental Construction.

The long-continued construction of a statute by the department charged with its execution should not be overruled except for cogent reasons.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., May 21, 1912.

The appended decision of District Judge Van Valkenburgh, in the case of United States *v.* Military Construction Co , in the United States District Court for the Western District of Missouri is published for the information of collectors of internal revenue and others concerned.

Royal E. Cabell, *Commissioner.*

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DISTRICT COURT OF THE UNITED STATES, WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI. No. 3831.

United States v. *Military Construction Co.*

VAN VALKENBURGH, *District Judge:* The United States, through the district attorney at the instance of the Commissioner of Internal Revenue, brought suit against the defendant to recover penalty for failure to make return under paragraph 3 of section 38 of the act of Congress approved August 5, 1909, providing for a special excise tax on the business of corporations. The defendant answered that its entire net annual income is less than $5,000, and in consequence thereof that it is not subject to such corporation tax and was not required to make a return to the collector of internal revenue. To this answer the Government demurred.

Upon the presentation of this demurrer the court was led, upon a somewhat superficial inspection of the statute, to intimate that the corporation, conceding its answer to be true, would not be subject to the law and that the demurrer should be overruled. Upon further consideration, however, I am of opinion that the judgment then formed was erroneous and should be revised.

My attention has been called to an opinion of the honorable Solicitor General, rendered August 7, 1911, in which he reached the conclusion that all corporations, joint-stock companies, or associations organized for profit and having a capital stock represented by shares, as defined in the act, are subject to this excise tax and therefore required to make the return provided in the third paragraph of the section. I think his reasoning convincing and his conclusion sound.

By section 38 (36 Stat., 112) it is provided:

> That every corporation, joint stock company, or association, organized for profit, and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, "exclusive of certain receipts then specified."

The same section in a proviso then excepts certain other classes of corporations and organizations from the operation of that section—that is to say, expressly provides that such excepted classes shall not be subject to the tax.

The income tax law of 1894 (28 Stat., 553), explicitly requires returns from all business corporations, whether or not they had any net incomes during the year. Manifestly, corporations which had no net incomes could not be required to pay an income tax. Nevertheless, the law expressly required a return. This is instructive and pertinent only in so far as it indicates the policy and practice of requiring returns from all corporations of a class subject to the tax, whether or not for any particular year they were bound for any amount of tax.

Section 27 of the war-revenue law of 1898 (30 Stat., 448) provided:

> That every person, firm, corporation or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed two hundred and fifty thousand dollars, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of two hundred and fifty thousand dollars.
>
> And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation or company may be located, or in which such person has his place of business.

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Here it will be seen that the limitation that the gross annual receipts should exceed $250,000 is expressly made a part of the description of the corporation made subject to the tax. It would seem, therefore, that under that law corporations whose gross annual receipts did not exceed $250,000 were specifically excluded, and were not required to make the return provided for. Nevertheless, the Treasury Department construed that law to require returns from all who were engaged in the designated business. In its circular of July 7, 1899, directing when and by whom returns should be made, it said:

The foregoing instructions will also apply to all such persons, firms, corporations, and companies where the gross receipts, during the period for which the return required by law is made, do not exceed the $250,000 specially exempted from tax.

Of this the honorable Solicitor General says:

This usage of the Government, requiring all those engaged in the designated business as being subject to the tax to make returns, even though the volume of business was not large enough to make them liable for any amount of tax, was no doubt in the mind of Congress when enacting the law of 1909, and should be considered in construing that law.

The Treasury Department has construed the present law to mean that all corporations organized for profit, and having a capital stock represented by shares, must make this return irrespective of whether or not their entire net annual income is over and above $5,000. So that, for a period of 18 years legislation of this nature has been thus construed by the department charged with its administration. If this interpretation by the department is not obviously or clearly wrong, but is fairly supported by the language employed, the action during many years of the department charged with the execution of the statute should be respected and not overruled except for cogent reasons. United States *v.* Finnell (185 U. S., 236). Furthermore, as has been said, it may well be that this construction was in the mind of Congress when this legislation was enacted.

It will be observed that in the present act the amount of the net annual income is not made an integral part of the description of the class of corporations, joint-stock companies, or associations made subject to the tax. Their essential characteristics are that they shall be organized for profit, and have a capital stock represented by shares, and that they shall be actually engaged in carrying on or doing business. The classification does not include those specifically exempted in the proviso, nor corporations generally not organized for profit, and not doing business in that sense. This interpretation that it is its inherent nature and not its income that stamps the corporation designated as subject to the tax is supported by the decision of the Supreme Court in Flint *v.* Stone Tracy Co. (220 U. S., 107–144, et seq.). This is further made apparent by other provisions of the act. The return required is a somewhat complicated one. It consists of eight sections; the proper interpretation of which controls the determination of what the net income may be. This is a matter for the exercise of the official judgment and discretion of the Revenue Department; in order that it may exercise such judgment and discretion it must have the facts before it. The officers of the corporation and those of the Revenue Department may differ as to the ultimate effect of such facts. The honorable Solicitor General in his opinion well said:

As well permit the corporation to determine for itself how much tax it is liable for as permit it to so determine whether it is liable for any amount. The law in every respect is to be administered by the officers of the law and not by those who are subject to it. Efficiency of administration would be difficult, and even impossible, if the corporations could determine each for itself whether or not they were liable for any amount of tax and make or withhold returns accordingly.

Furthermore, if the obligation to make a return depends upon the amount of net annual income and lies within the discretion of the corporation itself, then by reason of the fluctuation in business affairs, the same corporation might deem itself charged with the duty of making a return in one year and absolved from that duty in another

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year according to conditions. This would lead to endless confusion. Nor can it be successfully urged that corporations whose incomes are consistently small should be excused. The law, to be effective, must be uniform.

It must not be forgotten that the revenues of the Government are its life blood; without them it can not exist. Taxes are imposed, in large measure, with reference to estimated needs, and the collection of such taxes must be effective and thorough in order that the estimated revenue may not fall short of known requirements. For these reasons, such statutes are construed with greater strictness in favor of the revenues.

The duty of making these returns is one comparatively light to each corporation subject to the tax, and may easily and readily be provided for as a regular part of its business system. In the aggregate the burden thrown upon the collecting department of the Government is a heavy one, and should not be increased by imposing upon it the added necessity of initiative in the discovery of delinquents. Its labors in that regard will be great enough if those subject to the tax are held to the full measure of duty contemplated by the law. If it were left to each corporation to determine whether it need make the return provided for, there can be little doubt that the number of delinquents would be largely increased. It would follow, either that an added burden of investigation would be cast upon the Revenue Department, or that the revenues would be greatly diminished. The court should not lean to a construction which would contribute to either result. If the present law is deficient, or unduly harsh in its terms, it should be so amended as to enable its administration to meet the requirements of justice and the necessity of particular cases.

For the foregoing reasons the demurrer to the answer will be sustained.

(T. D. 1775.)

Cumulative annual leave of storekeepers, gaugers, and storekeeper-gaugers.

Regulations prescribing manner of computing cumulative annual leave of absence with pay of the classes of officers above named.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 18, 1912.

To collectors of internal revenue and others concerned:

An act of Congress approved June 23, 1910, granting cumulative leave of absence to storekeepers, gaugers, and storekeeper-gaugers with pay provides:

> That storekeepers, gaugers, and storekeeper-gaugers shall be, and are hereby, granted a cumulative annual leave of absence, with pay, not to exceed in the aggregate fifteen days for any one year: *Provided*, That said leave of absence is so computed as not to exceed one and one-quarter days for each twenty-six days said storekeepers, gaugers, and storekeeper-gaugers are actually assigned to duty: *Provided, further*, That such leave shall be operative under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

In accordance with the provisions of the above quoted act and supplemental to T. D. 1699 and T. D. 1708, dated May 22 and June 26, 1911, respectively, the following regulations are hereby promulgated:

1. In computing cumulative annual leave of absence with pay to be taken within the fiscal year 1913 and thereafter, the days that the

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officers were on leave of absence with pay within the preceding fiscal year will be considered as time "actually assigned to duty," the Comptroller of the Treasury having decided that "the person (storekeeper, gauger, or storekeeper-gauger) while taking his leave is in a pay status and may be viewed as being assigned to duty." In other words, in computing the number of days "actually assigned to duty," the number of days the officer was on leave will be included.

2. The accounts covering cumulative leave of absence rendered on Forms 150 and 107, as the case may be, should show the month, the number of days employed, and the amount of compensation received for each month during the entire fiscal year upon which leave is based, giving the total number of days employed and the total compensation received during the fiscal year in which the leave accumulated.

For guidance in the preparation of bills covering leave of absence, the data as indicated below for the months of July, August, and September should be given for each month in which the officers were employed within the fiscal year:

Month.	Number of days employed.	Amount of compensation.	Title of officer.
July	26	$104.00	Storekeeper-gauger.
August	27	108.00	Storekeeper.
September	26	117.00	Gauger.
Total	79	229.00	

The information required is necessary in order that this office can readily verify the correctness of bills rendered.

3. On each account on the line marked "Days employed" the officer should indicate by the figure 1 the days that he was on leave of absence with pay.

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH, *Secretary of the Treasury.*

(T. D. 1776.)

Denatured alcohol—Renewal bonds to be given July 1, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 1, 1912.

To collectors of internal revenue and others concerned:

Supplemental to the notice given in Denatured Alcohol Regulations No. 30, of August 22, 1911, that "Bonds given under previous regulations, unless otherwise revoked or canceled, will remain in force until July 1, 1912," notice is hereby given that the following-

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named bonds have been revised and will be required on and after that date:

Form 572—Bond of proprietor of distillery denaturing warehouse.
Form 582—Bond of manufacturer using specially denatured alcohol.
Form 611—Bond of proprietor of central denaturing warehouse.

Requisition for blanks of these revised bonds and for the following named bonds should be made not later than June 15 instant:

Form 586—Bond of manufacturers recovering completely denatured alcohol.
Form 589—Bond of proprietor of restoring and redenaturing plant.
Form 614—Bond of industrial distillers.
Form 653—Bond of dealer in specially denatured alcohol.

Renewal bonds may be executed prior to July 1, 1912, to take effect on that date, and such bonds will continue in force until revoked or canceled. Such bonds, however, will supersede bonds previously executed only as to alcohol produced or applied for on and after July 1, 1912, and all alcohol previously produced or applied for will remain an outstanding charge against such previously executed bonds until duly accounted for.

Manufacturers on renewing their bonds, as herein provided, will not be required to renew their notices (Form 581), nor will they be required to file new applications for specially denatured alcohol (Form 583), where such applications are "continuing" ones and cover alcohol to be obtained from the denaturer or dealer specifically named in the renewal bond.

Special attention, however, is called to article 78 of Regulations 30, revised, and to the fact that where a manufacturer desires to obtain specially denatured alcohol from more than one denaturer or dealer a separate bond (Form 582) and separate application (Form 583) must be filed in each such case.

Until a revised form has been furnished, application for specially denatured alcohol to be procured from a bonded dealer will be made on a modified Form 583.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1777.)

Regulations governing the temporary storage of distilled spirits bottled in bond for export.

[Circular No. 28—Int. Rev. No. 745.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 13, 1912.

To enable distillers and owners of distilled spirits bottled in bond for export to keep on hand a sufficient quantity of such bottled spirits to meet orders for immediate shipment, the following regulations, supplemental to Regulations No. 23, revised June 5, 1907, are issued:

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LOCATION AND CONSTRUCTION OF STOREROOM.

Inasmuch as spirits withdrawn tax-paid and spirits withdrawn for export are not permitted in the bottling warehouse at the same time, no portion of the bottling warehouse can be used for the storage of spirits bottled for export. A separate room or building on the distillery premises must be provided for the purpose. Upon written notice to the collector and Commissioner of Internal Revenue a portion of the distillery warehouse already approved may be used for the purpose, after the separation of the same from other portions of the building by solid and unbroken walls and floors; or a separate room or building suitable for the purpose may be approved upon application, as in case of approval of an addition to distillery warehouse. Such storerooms or warehouses must be constructed and secured in all respects as distillery warehouses, and will be under control of the collector and in charge of the storekeeper assigned to the bottling warehouse.

STORAGE BOND.

When such storeroom has been established the proprietor, before using the same, will file with the collector a bond (Form 654) in duplicate, with satisfactory sureties, conditioned for the safe storage and proper accounting of all such spirits. The penalty of such bond must be sufficient to cover the tax on the largest quantity of spirits that may remain in the storeroom at any one time, and in no case less than $500.

Upon approval of the bond by the collector the duplicate thereof, with the other papers in the case, will be forwarded to the Commissioner of Internal Revenue for acceptance.

APPLICATION FOR WITHDRAWAL, ETC.

Where spirits are to be so bottled and stored, applications for withdrawal to the bottling warehouse will be made on part 1 of Form 655; and, on receipt by the gauger of the collector's order, part 2, and the necessary export stamps, the spirits will be at once inspected, gauged, marked, and stamped, in the original packages, and removed to the bottling room. On receipt in the bottling warehouse the spirits will at once be bottled, cased, wired, and marked as in the case of spirits bottled for immediate exportation, except that the required marks showing the port from which and the foreign port to which the spirits are to be exported may be omitted until the cases are ready for shipment.

As cases containing bottled spirits, when properly marked and stamped, are required to be immediately removed from the distillery premises, the affixing of export stamps to such cases should, therefore, be deferred until such time as the spirits are ready for immediate

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shipment. Such stamps, however, should be procured from the collector prior to or at the time of bottling.

DEPOSIT OF SPIRITS IN STOREROOM.

When the spirits have been bottled and cased, as first above indicated, the distiller or owner will indorse on his application his entry for redeposit (Form 655, pt. 3), and the officer in charge will see that the spirits are at once removed to the designated storeroom. As such room will be approved for the temporary storage of such spirits, the quantity remaining therein at any one time should not exceed the estimated quantity that will be exported during a period of six months.

REMOVALS FOR EXPORT.

Applications for such removal should be made on Form 206 (Art. 24, Regulations No. 29), modified by striking out of said form the words which are applicable only to original packages.

The subsequent proceedings, respecting the filing of bonds, bills of lading, etc., will be in accordance with the provisions of said Regulations No. 29.

OFFICERS' REPORTS.

Spirits withdrawn from bonded warehouses, when bottled and stored as herein provided, should be reported on the various forms, as required in the case of direct exportation.

Pending a revision of Form 309, the officer, in rendering his report on that form, will attach to the last page thereof a statement showing the number of cases containing spirits of each season's production remaining in the storeroom at the close of the month, the actual contents in proof gallons and the serial numbers of the cases so held. The aggregate quantity so reported should agree with the total quantity in proof gallons reported in column 11, line 14, last page of that form, less the quantity remaining in warehouse uncased.

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH, *Secretary of the Treasury.*

(T. D. 1778.)

Alcohol withdrawn from bond, free of tax, for scientific purposes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1912.

To collectors and other officers of internal revenue:

The appended act of Congress, approved June 4, 1912, is published for the information of all concerned.

ROBT. WILLIAMS, JR.,
Acting Commissioner.

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[Public No. 176—H. R. 16690.]

AN ACT For the relief of scientific institutions or colleges of learning having violated sections thirty-two hundred and ninety-seven and thirty-two hundred and ninety-seven-a of the Revised Statutes and the regulations thereunder.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized on appeal to him made to abate, remit, and refund all taxes or assessments for taxes the liability for which is asserted against any scientific institution or college of learning on account of any alcohol withdrawn from bond free of tax in accordance with the provisions of sections thirty-two hundred and ninety-seven and thirty-two hundred and ninety-seven a, Revised Statutes, and not used as authorized by the above-mentioned law and regulations thereunder: *Provided*, That no assessment made of tax imposed shall be abated or refunded as to any alcohol so withdrawn and used for beverage purposes: *And provided further*, That all applications for relief under this Act shall be filed in the office of the Commissioner of Internal Revenue within one year from the date of the approval of this Act, and no liability incurred on or after March first, nineteen hundred and twelve, shall be relieved against hereunder.

Approved, June 4, 1912.

(T. D. 1779.)

Indorsements on certificates of deposit.

Examples given in explanation of requirements of Mim. 858, dated June 3, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1912.

SIR: Your letter of the 11th instant has been received, in which you acknowledge the receipt of Mim. 858, dated June 3, 1912.

The form of indorsement on certificates of deposit, beginning July 1 next, as submitted by you, is approved with a few modifications. The following is suggested as a model:

A. B., offer in compromise		$25.00	
C. D., offer for real estate		100.00	
Gross proceeds of seizure sale, case of E. F		53.25	
Gross proceeds of distraint sale, case of G. H		65.00	
Gross proceeds of sale of old material		10.00	
Other regular collections		300.10	
Total regular collections			$553.35
I. J., offer in compromise	C. T.	15.00	
Gross proceeds of distraint sale, case of M. N	C. T.	210.00	
Other corporation excise taxes		530.33	
Total corporation excise taxes			755.33
Amount of this certificate			1,308.68

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

COLLECTOR OF INTERNAL REVENUE,
Tacoma, Wash.

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(T. D. 1780.)

Revised forms of accounting.

Revised forms to be used exclusively from and after July 1, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1912.

To collectors of internal revenue, internal-revenue agents, and others concerned:

Beginning with July, 1912, vouchers, schedules, and reports, the following revised forms, as indicated by numbers, will be used exclusively. If any others than these revisions are used they will be returned to be made on the required revised forms:

63½ (63½*a* inside sheet), 378, schedule 63. Approved May 11,1912.

107 (150*a* to be used to itemize expenses), schedule 56. Approved May 11, 1912.

150 (150a, inside sheet), schedule 469. Approved May 11, 1912.

618, schedule 85. Approved May 11, 1912.

627, schedule 628. Approved May 11, 1912.

133 will no longer be used by surveyors in rendering their bills. 63½ will be used instead. Hence Form 133 from and after July, 1912, will be obsolete.

10 (63½*a* to be used by special employees and office deputy marshals to itemize expenses), schedule 131. Approved May 11, 1912.

54, no schedule. Approved May 11, 1912.

132, no schedule. Approved May 11, 1912.

22 and supplement to 22. Approved June 10, 1912.

In the additional column of revised Form 22 and the additional columns of revised supplement to Form 22, the amounts of collections are to be carried forward from month to month, thus showing the totals for the fractional part of the current fiscal year, including the month for which the reports are made.

49. Approved June 10, 1912. Form 49 should be prepared in duplicate on a typewriter by using carbon paper, both copies signed by collector and forwarded to this office.

Form 492 has been abolished as of July 1, 1912. One copy of the form 49 to be forwarded to this office will be used in lieu thereof as a voucher to the revenue account current.

These revised forms have been prepared to conform to the requirements of the President's Commission on Economy and Efficiency, and the classifications as provided for in the forms must be made, as any departure therefrom would tend to destroy the value of the data reported therein just to the extent of the failure to report items under the proper headings.

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All old forms on hand should be destroyed, except such as might be necessary to make copies of old vouchers, reports, etc., and the forms retained for that purpose should be plainly labeled "Not for current use."

The revised forms mentioned above are now in the hands of the Public Printer. A supply of same will be mailed to the officers requiring them as soon as received at this office. It may be well along in July, however, before these forms can be mailed, but it is believed they will be received in due season to be used for the month of July.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1781.)

Keys of locks on tank cars containing alcohol shipped for denaturation.

Such keys to be sent by express or registered mail to point of destination and return at Government expense.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 22, 1912.

SIR: Your letter of the 17th instant has been received, in which you refer to keys of locks on tank cars containing alcohol shipped for denaturation to be forwarded by registered mail or express to the point where the alcohol is consigned, and ask to be advised whether the distiller or the Government should pay for registration or express charge.

In reply, you are advised that as the requirement is a precautionary one in the interest of the Government, the necessary expense incident to registry or expressage should be paid by the collector in his capacity as disbursing agent.

Registry stamps or Government bills of lading should be furnished the officer who makes the shipment, or if such officer has not been furnished registry stamps and it is necessary to reimburse him for the value of same, he should furnish you with a receipt from the postmaster from whom the stamps were purchased and this receipt should be attached to your Form 85, together with the officer's bill on Form 618.

In this connection you are advised that while keys to locks on tank cars containing alcohol shipped for denaturation can be sent by registered mail, it would be preferable, in the opinion of this office, to return the locks and keys by express, the standard Government bill of lading to be used in making such shipments.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

COLLECTOR FIRST DISTRICT, *Brooklyn, N. Y.*

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(T. D. 1782.)

Forms 11, return of special-tax payers.

Explanation and modification of instructions relative to obtaining Forms 11 contained in mimeograph letter 846, dated April 19, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1912.

SIR: This office acknowledges the receipt of your letter of the 7th instant, relative to certain parts of mimeograph letter 846, dated April 19, 1912, which appear to be in conflict with previous instructions issued by this office and the general practice that has heretofore obtained in the several collection districts.

First, there seems to be some misunderstanding respecting the first paragraph under the caption "Duties of deputy collectors," and the first paragraph under the caption of "General instructions." The first is under section 3172, Revised Statutes, and Regulations No. 1 relating to obtaining Forms 11 and the other paragraph is intended as a modification of the existing regulations, and if considered in that connection it will be noted that the duty of visiting special-tax payers is not to be taken up vigorously until such time as the collector is able to check up Forms 11 received for the ensuing year with record 10 for the closing tax year. It is the aim of the department to have as many of such Forms 11 filed before the beginning of the tax year as possible. How this is accomplished is left largely to the discretion and experience of the collector.

The second sentence of the last paragraph of page 1, mimeograph 846, requiring collectors to report to the district attorney all special-tax payers continuing in business who have not filed Form 11, paid their tax, and posted their special tax on the first day of the tax year, is hereby so modified (except in those cases provided for in T. D. 1605) that only those taxpayers who fail to file Form 11 and pay their tax during the month of commencing business will be so reported. See Volume XXV, Internal Revenue Record (p. 237), and T. D. 20230, October 19, 1898. Collectors and their deputies will use every means in their power to have special taxes paid promptly. There does not appear to be any reason why the Government tax can not and should not be collected as promptly as a municipal tax assessed on the same business.

In the matter of collectors furnishing blank Forms 11 to manufacturers and wholesale dealers to be by them furnished to their cus-

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tomers, this office leaves this largely to the discretion of the collector, who, by proper supervision, should be able to determine whether or not this privilege is being abused in his district. Many instances have been brought to the attention of the department where a person or firm operating under a trade name has given the name of the proprietor, or in the case of a firm the name of but one member of the firm, and has not given the trade name, or vice versa. A Form 11 is not complete unless the trade name (if one is used) as well as the name of the proprietor or each member of the firm is stated. Again, salesmen have had Forms 11 signed by the taxpayer and, later going before a notary public or other officer, have had such officer append his jurat, when it is required that the taxpayer shall sign and make oath to the return in the presence of such officer.

Again, salesmen who are notaries public, commissioned in one county or State, have made the jurat on Form 11 for a taxpayer doing business outside their jurisdiction. These are the practices referred to in mimeograph 846 that must be guarded against. No positive instructions relative to furnishing Forms 11 to wholesalers and manufacturers have been promulgated, nor are such instructions contemplated. The department believes that collectors are better able to determine the means of obtaining proper returns from special-tax payers, and this matter is, therefore, left to their discretion. Special vigilance, however, should be exercised in this matter, and any irregularities discovered should be at once reported, and, if of a flagrant character, the collector should refuse to furnish a further supply of Forms 11 in such cases.

No collector will furnish Forms 11 for use outside his own district except in cases where a company or firm having its principal office in his district operates branch stores, etc., in other districts.

Attention is called to an error in the table on the back of revised Form 11. The special tax for manufacturer of process or renovated butter is there given as $600 per annum instead of $50 per annum.

The note following this table, relating to 50 per cent penalties, is applicable to all special taxes, except as to retail liquor dealer for nine months and three months, where, instead of dropping the fractional part of a cent, a half cent should be added, thus making penalty $9.38 and $3.13, respectively. The instructions printed on Form 11 are for the information of the taxpayers.

Collectors and deputy collectors will be governed by the table on page 102 of Regulations No. 1, revised.

Respectfully, ROYAL E. CABELL, *Commissioner.*

COLLECTOR FIRST DISTRICT, *San Francisco, Cal.*

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(T. D. 1783.)

Fortification of wines.

Modification of T. D. 1663, dated November 15, 1910, relative to the fortification of wines for export with brandy free of tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 26, 1912.

To collectors of internal revenue and others concerned:

Where it is impracticable to fortify wine for export "alongside the vessel" or car as provided in paragraph 2 of T. D. 1663, such wine may be fortified in a bonded manufacturing warehouse under the provisions of section 15, act of July 24, 1897, as amended by section 23 of the tariff act of August 5, 1909. In such cases the brandy to be used in fortifying the wines will be transferred from a special bonded warehouse to the bonded manufacturing warehouse under the provisions of Articles 137 to 143 of Regulations No. 29, revised January 1, 1909.

ROYAL E. CABELL, *Commissioner.*

Approved:
FRANKLIN MACVEAGH,
Secretary of the Treasury.

(T. D. 1784.)

Special excise tax on corporations—Returns—Court decision.

1. RETURNS.
   Corporations having a net income of $5,000 or less are not exempt from the requirement that a return be made to the collector of the district.
2. PENALTY.
   The minimum penalty for failure to comply is $1,000.
3. VERDICT.
   Motions to set aside the verdict denied.
4. REMEDY.
   No remedy (other than appeal), except by compromise.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 1, 1912.

The appended extract from decision of District Judge Thomas S. Chatfield, in the case of United States *v.* Acorn Roofing Co. and four other corporations, in the United States District Court for the Eastern District of New York, is published for the information of collectors of internal revenue and others concerned.

ROYAL E. CABELL, *Commissioner.*

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UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK. JUNE 22, 1912.

United States v. *Acorn Roofing Co., United States* v. *Broadway Bowling Academy, United States* v. *Dessner & Co., United States* v. *Fein-Ball Realty and Construction Co., and United States* v. *Finkel & Co.*

CHATFIELD, *District Judge:* In the cases before the court, actions have been brought against five corporations to recover, in suits at law, the penalty provided by act of Congress of August 5, 1909, chapter 6, section 38 (36 Stat. 112), for failure to file returns. By direction of the court, the jury in each case has found a verdict and has fixed the amount of penalty at the minimum, viz, $1,000.

The facts shown by the record in the five cases do not differ so far as the present question is concerned. Each of the five corporations was organized under the laws of the State of New York and either was doing or was authorized to do business during the year 1910. None of them made the return required by statute by March 1, 1911, nor did any one obtain any extension during the 30-day period or apply to the Secretary of the Treasury to compromise their obligation for failure to comply with the statute. In each of the cases, however, the defendant has ultimately filed a report showing that the net income received by it during the calendar year 1910 did not amount to the sum of $5,000, and in one instance, at least, the evidence shows that the defendant did no business whatever beyond keeping itself in existence during that year.

The statute provides that each corporation "now or hereafter organized" shall be subject to pay, etc. This clearly makes every corporation not actually dissolved or legally out of existence subject to the provisions of law.

The next question presented is whether every organization admittedly within the classes defined, viz, a corporation, joint-stock company, or association organized for profit, and having capital stock represented by shares, and every insurance company, except the particular ones exempted, is liable to the duty of making the annual return specified by the statute, or whether only those who enjoyed a sufficient net income to make them liable to the payment of the annual tax, are under obligations to make the return.

This question was first passed upon, for the guidance of the Treasury Department in administering the law, by an opinion of the Solicitor General, issued upon the 7th day of August, 1911, and approved by the Attorney General.

* * * * * * *

In the case of United States *v.* Military Construction Co., decided by the United States District Court for the Eastern District of Missouri, and published as T. D. 1774 (not yet reported), and the same question as is presented in the present case was considered by the court and the conclusions of the honorable Solicitor General were followed, for the reason that the application of the war-tax law was considered to have been in the mind of the Congress when passing the present statute.

* * * * * * *

The minimum penalty for the wrongful act is $1,000, and the maximum penalty is $10,000. A willful act of this sort is also made a misdemeanor, and the law provides that the tax shall be increased by one-half, and shall bear interest if a return is not made by a certain time. It also provides that the Commissioner of Internal Revenue may prepare the return after investigation and fix the tax. The language of this section, giving authority to investigate upon report that a corporation "has failed to make return as required by law," is pertinently pointed out by the Solicitor as indicating that every corporation is bound to make such return, even if not showing business enough to make it liable for the tax.

If the provision for an addition of 100 per cent for false return, or 50 per cent for neglect, with added interest, were not based upon the *amount of the tax* instead of the minimum amount of income taxable, it would be possible to treat this as the penalty

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for neglect, or honest belief that a return was not necessary, and the difficulties of the present situation could be avoided.

But such is not the case. The law has provided but the one penalty; and in the present instances, where jury trials have been had in civil actions, the verdict must provide the amount of the penalty, and nothing less than the minimum amount, $1,000, can be found.

The present motions, therefore, which have been considered to set aside the verdict of $1,000 in each case, must be denied and the various corporations can have no remedy (other than appeal) except to apply, as is indicated in the opinion of the Solicitor General above quoted, to the Commissioner of Internal Revenue or to the Secretary of the Treasury for a compromise of the Government's claim under sections 3229 and 3469 of the Revised Statutes.

(T. D. 1785.)

Denatured alcohol.

Use of denatured alcohol permitted in display bottles of perfumery.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 6, 1912.

SIR: This office is in receipt of your communication of the 28th ultimo; also the samples of display packages of perfumery.

You request a decision upon the legality of the use of completely denatured alcohol as a filler for display bottles of perfume. You state that you are at present using Columbian spirits to which has been added the proper coloring matter but not the essential principles of the perfume. These packages are used as window displays, and are not to be sold, each bottle bearing a label to this effect.

In reply, you are informed that this office will permit the use of completely denatured alcohol in the preparation of such packages. It is understood that coloring matter only will be added to the contents of these display packages and that no odoriferous principle will be used, and that the packages will bear a prominent label stating that they are for window display and are not to be sold.

The office retains the right to revoke the above decision at any time.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. ——— ———.

(T. D. 1786.)

Violation of law relative to distilled spirits—Court decision.

1. CONVICTION AND FORFEITURE.

A conviction in a criminal proceeding against the distiller is not a bar to forfeiture of property seized.

2. SEC. 3281, REVISED STATUTES, CONSTITUTIONAL.

This section provides for fine and imprisonment operating on the person and for forfeiture of the spirits produced, and the distillery outfit. Both may exist without violating the constitutional provision respecting the punishment of a person twice for the same offense.

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3. CONSTRUCTION OF REVENUE STATUTES.

Statutes to prevent fraud upon the revenue are not to be construed strictly in favor of the defendant, but are to be fairly and reasonably construed so as to carry out the intention of the legislature.

4. CONSTITUTIONALITY IS PRESUMED.

An act of Congress is presumed to be in accordance with the Constitution unless the contrary is established beyond a reasonable doubt.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 15, 1912.

The appended decision of the District Court of the United States for the Southern District of Georgia, in the case of United States *v.* 71 Barrels of Whisky, etc., is published for the information of collectors of internal revenue and others concerned.

ROYAL E. CABELL, *Commissioner.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA.

United States of America v. *71 Barrels of Whisky, etc.*

INFORMATION *in re* plea in bar of A. K. Atkinson, claimant, demurrer thereto.

[July 10, 1908.]

A. K. Atkinson has been tried and convicted under the provisions of section 3281 of the Revised Statutes, which defines the crime of engaging in the business of a distiller with intent to defraud. Seventy-one barrels of distilled spirits, the product of the distillery thus fraudulently operated, and other property, have been seized by the officers of the Internal Revenue Department. The proceeding before the court is for the condemnation of the spirits thus seized. A plea in bar is interposed by Atkinson, as claimant of the spirits unlawfully distilled by him, upon the ground (1) that he has already been convicted of the criminal offense; (2) that the proceedings in rem involve the identical issues on which he has been tried; (3) that section 3281 of the Revised Statutes, in so far as it authorizes the forfeiture and as well the criminal penalty, is in violation of the fifth amendment of the Constitution, in that it subjects him to be punished twice for the same offense, and deprives him of his property without due process of law; and (4) that the proceeding is also in violation of the seventh amendment, which provides that no fact tried by a jury shall be otherwise reexamined in a court of the United States than according to the rules of the common law. For these reasons, he prays that the proceeding in rem be dismissed, and that the property now under seizure be restored to his custody. Assistant District Attorneys Akerman and Storrs, who appeared for the Government, demurred to the plea in bar.

While the precise question in issue has perhaps not been definitely determined, the considerations presented by the learned counsel for the defendant, in their ingenious arguments, have been frequently passed upon by analogous decisions in courts of the United States. These with two exceptions (United States *v.* McKee, decided in 1877, 4 Dill., 128, 26 Fed. Cas., 15688; and United States *v.* One Distillery, 43 Fed. Rep., 846) are all adverse to the plea in bar. The first of these cases is met by the subsequent, and apparently more satisfactory, conclusions in the case of the United States *v.* Three Copper Stills (47 Fed. Rep., 499), decided 13 years later than the McKee case, viz, in 1890. In both cases the unlawful removal of distilled spirits was the criminal act involved. In the latter case it was held that a conviction because of a removal to a

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place other than the distillery warehouse provided by law for distilled spirits, on which the tax imposed by law has not been paid, is not a bar to an information for forfeiture, for carrying on the business of a distiller with intent to defraud the United States of the tax on spirits. This provision of the Constitution it is held is not a limitation upon the kinds of punishment which may be inflicted for an offense; hence there may be a fine and imprisonment, and forfeiture, for the same offense if the law so provides. The learned judge concludes from the reasoning of the court in Coffey *v.* United States (116 U. S., 445, decided in 1886) that—

It must necessarily follow from the reasoning of the court that if an acquittal is conclusive on the United States, a conviction must be conclusive on the convicted claimant.

The court, in United States *v.* Three Copper Stills, *supra*, points out that in the McKee case there was a direct proceeding against McKee to secure "double taxes for the same offense for which he had been convicted and sentenced." This may be differentiated from a proceeding like that before the court here, which is merely to forfeit a thing subject under an express statute because of its status, use, or location.

The second case which is relied upon to sustain the plea is that of the United States *v.* One Distillery (43 Fed. Rep., 846). There it is held that the conviction of a stockholder and secretary of a company for acts against the revenue laws, while secretary, is a bar to an information for the forfeiture of certain personal and real property, charging acts committed with a design to avoid payment of taxes. It was there held that the former conviction of the secretary precluded the forfeiture of the company's property. It was further held that the fact that the plea in bar was entered by the other stockholders, who had not been prosecuted for the fraudulent acts and omissions that were made the basis of the action of forfeiture, did not matter; that the conviction of the secretary defeated the right of the Government to proceed by information for the forfeiture of the corporation's property. After careful consideration we find it impossible to adopt this conclusion. If it be sound, then in most cases the conviction of any subordinate officer of a corporation, no matter how injurious the crime to the Government or the public, would satisfy the law, and would exempt the holdings of the corporation, however valuable, from such deterrent or punitive measures against the property as Congress may have enacted for the public welfare. The result would seem that prosecutions directed against combinations of the most dangerous character, prosecutions authorized for the broadest purposes in behalf of the public, might result in the perhaps meritorious but inadequate sufferings of corporate scapegoats or other vicarious hostages.

Indeed, to remedial statutes to protect the Public Treasury and the great body of the people from injurious fraud or wrong, the strict rules of construction prevailing at common law are not always applicable. An illustration of this doctrine may be found in United States *v.* Stowell (133 U. S., 12). It was declared:

By the now settled doctrine of this court, statutes to prevent frauds upon the revenue are considered as enacted for the public good and to suppress a public wrong, and therefore, although they impose penalties or forfeitures, not to be construed, like penal laws generally, strictly in favor of the defendant; but they are to be fairly and reasonably construed, so as to carry out the intention of the legislature.

Now, section 3281 of the Revised Statutes, like 3257, merely provides one complete punishment for the offense therein denounced. This includes fine and imprisonment operating upon the person, and forfeiture of the property which is utilized to effect the fraud upon the Government, viz, the distillery spirits produced and the distillery outfit used. It does not matter, because, in the nature of the case, a criminal prosecution is essential to enforce one part of the penalty, and a civil proceeding the other, that the penalty is twice imposed. It has been held that a judgment of forfeiture under an action in rem is not a bar to criminal action involving the same offense: United States *v.* Olsen (57 Fed. Rep., 579; 9 Fed. Stats. Ann., 268). "That forfeiture of the property and a fine imposed upon the offender may both exist, I have

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no doubt," said the learned judge in United States *v.* 7 Barrels of Whisky (131 Fed. Rep., 809). Again, in Origet *v.* United States (125 U. S., 246), a case under the custom laws, the Supreme Court declares:

The fine, or the imprisonment, or both, are to follow conviction on a criminal prosecution of the owner, importer, consignee, agent, or other person who does the act forbidden by the section, with the intent therein mentioned. The section then goes on to say that "In addition to such fine, such merchandise shall be forfeited." The sole meaning of this is that the person owning the merchandise shall lose it by forfeiture, in addition to such possible loss as may come to him by the imposition, if he is the offender, of the pecuniary fine on the criminal prosecution against him. But the merchandise is to be forfeited irrespective of any criminal prosecution. The forfeiture accrues to the United States on the commission or omission of the acts specified. No condition is attached to the imposition of the forfeiture.

There is no sort of reason why the same rule should not obtain with an internal-revenue forfeiture defined by explicit statute.

The assault upon the constitutionality of the statute, while ably pressed, is not deemed sufficient to overcome the rule stated in the Trademark cases (100 U. S., 96), as follows:

When this court is called upon in the course of the administration of the law to consider whether an act of Congress, or of any other department of the Government, is within the constitutional authority of that department, a due respect for a coordinate branch of the Government requires that we shall decide that it has transcended its powers only when that is so plain that we can not avoid the duty.

A fortiori, would the rule thus announced for itself by the Supreme Court be controlling upon this court. The rule is fortified by the familiar principle that every legislative act is presumed to be a constitutional exercise of the legislative power until the contrary is clearly established (United States *v.* Harris, 106 U. S., 635). The doctrine is even more strongly stated in many decisions, where it is held that an act of Congress is presumed to be in accordance with the Constitution, unless the contrary is established beyond a reasonable doubt.

It follows that the demurrer to the plea in bar should be sustained, the plea overruled, and it will be so ordered.

NOTE.—This case was taken up to the United States Circuit Court of Appeals, Fifth Circuit, and the judgment of the district court affirmed.

(T. D. 1787.)

Ambrew concentrated extract.

Special tax not required for use in compounding for home consumption solely, and not for sale.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 22, 1912.

SIR: This office is in receipt of your letter of the 11th instant relative to the sale of "Ambrew concentrated extract" manufactured by the American Products Co., Cincinnati, Ohio.

Replying, you are advised that no special-tax liability is incurred on account of the sale of Ambrew concentrated extract, which is a non-potable preparation, and no special-tax liability is incurred by the manufacture of a beverage with the aid of Ambrew concentrated extract for home consumption only.

Whether or not liability would be incurred on account of the manufacture for sale of a beverage prepared with the aid of Ambrew con-

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centrated extract depends upon the alcoholic content of the completed beverage, and if such alcoholic content is in excess of one-half of 1 per cent, by volume, liability to special tax as brewer and malt-liquor dealer would be incurred, respectively, for its manufacture and sale, as well as stamp tax upon the amount of such beverage produced.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

COLLECTOR, FOURTH DISTRICT, *Burlington, Iowa.*

(T. D. 1788.)

Injunction against payment of special excise tax.

1. ACTION CAN NOT BE MAINTAINED.

An action by a director or stockholder against a corporation and its treasurer to enjoin payment of the special excise tax to the collector of internal revenue can not be maintained.

2. INJUNCTION PROHIBITED DIRECTLY OR INDIRECTLY.

The prohibition against enjoining the collection of taxes rests on grounds of public policy and a stockholder can not do indirectly what he can not do directly.

3. APPLICATION DENIED.

The complainant has an adequate remedy at law and application for preliminary injunction is denied.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1912.

The appended decision of the United States District Court, Eastern District of New York, Nathan Straus *v.* Abrast Realty Co. (a corporation) and Simon F. Rothschild as treasurer of said corporation, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

Nathan Straus v. *Abrast Realty Co.*

MEMORANDUM on application for a preliminary injunction.

[July 22, 1912.]

VEEDER, *District Judge:* The general grounds of objection to the relief sought by the complainant in this application are plainly stated by the Supreme Court in Corbus *v.* Alaska Treadwell Gold Mining Co. (187 U. S., 455). It is a conclusive answer to all the grounds upon which the claim to equitable relief is based that the act of Congress under which the assessment in question was made affords a plain and adequate remedy at law.

At the outset of this dissenting opinion in the income-tax cases (157 U. S., 429), Mr. Justice White characterized in forcible terms the claim to relief in the form in which it is sought here. The statutes of the United States, in express terms, give a party who has paid a tax under protest the right to sue for its recovery, and forbid the maintenance of any suit for the purpose of restraining the assessment or collection of taxes (Rev. Stat., 3224, 3226). Repeated decisions of the Supreme Court have accordingly

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established the rule that the proper course in case of illegal taxation is to pay the tax under protest and bring an action against the officer who collected it. The rule which forbids the granting of an injunction to restrain the collection of a tax rests upon obvious grounds of public policy derived from the experience of ages. The complainant is seeking to do the very thing which the law prohibits. If a stockholder can not have the collection of the tax enjoined, it seems obvious that he can not have the corporation enjoined from paying it, and thus do by indirection what he can not do directly. The assertion that this is only a suit to prevent the voluntary payment of the tax suggests that the court may, by an order operating directly upon the defendant corporation and its officers, accomplish a result which the statute manifestly intended should not be accomplished by suit in any court. But to restrain a corporation or its officers from paying a tax, the collection of which can not be restrained in any court, would be a palpable evasion of the statute. Suppose, notwithstanding the granting of such an injunction, the collector proceeds to collect from the defendant corporation. If the court's judgment is sufficient in law to justify resistance to such collection, then we have beyond doubt a case in which a suit has been maintained to restrain the collection of taxes. If such judgment does not conclude, the collector, who was not a party to the suit in which it was rendered, then it is of no avail to the plaintiff. In other words, no form of expression can conceal the fact that the real object of this action is to prevent the collection of taxes imposed by Congress, notwithstanding the express statutory requirement that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

The circumstances under which the income-tax cases nevertheless proceeded to judgment upon the merits is disclosed at the outset of the opinion of Mr. Chief Justice Fuller, speaking for the majority of the court:

> The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the Government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves. Under these circumstances we should not be justified in declining to proceed upon the merits.

It is apparent, therefore, as Mr. Justice Brewer said in Corbus *v.* Alaska Treadwell Gold Mining Co., *supra*, that the decision in the income-tax cases "does not determine to what extent a court of equity will permit a stockholder to maintain a suit nominally against the corporation but really for its benefit." Nor does the decision in the corporation-tax cases (220 U. S., 107—including Zonne *v.* Minneapolis Syndicate, 220 U. S., 187), which were presented to the Supreme Court upon a similar record. In this case, however, the collector is a party to the order to show cause, and the district attorney has appeared specially for him in opposition.

The application for a preliminary injunction is denied.

(T. D. 1789.)

Correction of errors in the compilation of internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1912.

To collectors of internal revenue and others concerned:

Your attention is called to the following memorandum of errors requiring corrections in the Compilation of Internal-Revenue Laws, 1911.

Slips will be printed separately, which will be furnished on application and may be pasted in front of the compilation.

ROYAL E. CABELL, *Commissi*

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ERRATA.

NOTE.—This slip should be pasted in front of the Compilation of Internal-Revenue Laws, 1911, and corrections made in the proper place.

Page 9. In the list of Commissioners, Geo. W. Wilson, the words "to November 27, 1899," should read "to November 27, 1900."

Page 9. Robt. Williams, jr., Acting Commissioner, the words "from November 28, 1899," should read "from November 28, 1900."

Page 69. In line 2, the words "while traveling on duty" should read "when absent on duty from their legal residence." Make note in margin as follows: "Amendment made by Leg., Exec., and Jud. Appro. act of April 17, 1900, 31 Stat., 107."

Page 90. Third line from bottom, the word "deputy" is misspelled.

Page 111. In notes following sec. 3214, reference to sec. 951, p. 36, should read p. 424.

Page 128. In note under sec. 3238, reference to License Tax Cases should be "5 Wall." instead of "4 Wall."

Page 135. "Therfor" should be "therefor" in note referring to T. D. 418.

Page 136. In notes, the reference to sec. 3318*a* should cite p. 212 instead of p. 211.

Page 136. Fourth subdivision, fourth line, "persons" should be "person."

Page 201. Sec. 3304, first line, "hereinafter" should be "hereinbefore."

Page 204. Sec. 3309*a*, sixth line from bottom of page, "any" should be "and."

Page 225. Sec. 3333, fifth line, "liquor dealer" is misspelled.

Page 293. Fourth line from bottom, "page 131" should read "page 141."

Page 327. In notes, the word "corporation" is misspelled.

(T. D. 1790.)

Accounts for personal compensation of collectors.

Collectors of internal revenue should render accounts for personal compensation on Forms 378, to be scheduled on Forms 63 for the month in which paid.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1912.

To collectors of internal revenue:

Beginning with this fiscal year collectors of internal revenue will render their accounts for personal compensation on Forms 378, which will be fully executed, as are the bills of the deputy collectors and clerk

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in their offices. Collectors will not issue checks in payment of their salaries until the month following the one in which earned, and the bills will be scheduled on Forms 63 for the month in which paid.

Any instructions to the contrary heretofore issued are hereby revoked.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1791.)

Maltona.

Maltona classed as a fermented malt liquor, for the sale of which special tax is required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 31, 1912.

SIR: Replying to your letter of the 25th instant, relative to the manufacture by the Consumers Brewing Co., of Norfolk, Va., of a beverage called "Maltona," you are advised that in view of the fact that for the past 60 days the Consumers Brewing Co. has been putting Maltona upon the market with an alcoholic content of practically 1 per cent, this beverage is classed by this office as a fermented malt liquor, for the sale of which special tax should be asserted. Therefore you will report all dealers in your division for assessment of tax due on account of the sale of Maltona.

Respectfully, ROYAL E. CABELL,
Commissioner.

INTERNAL REVENUE AGENT, *Richmond, Va.*

(T. D. 1792.)

Denatured alcohol.

The use of special denatured alcohol as a solvent for shellac prohibited when the shellac is intended for use as a glaze for confectionery.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 1, 1912.

SIRS: This office is in receipt of your communication of the 18th ultimo, desiring to know if you would be permitted to use specially denatured alcohol as a solvent for shellac which is to be used as a glaze for confectionery.

In reply, you are informed that inasmuch as the Board of Food and Drug Inspection has prohibited, in Food Inspection Decision

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No. 119, the use of wood alcohol as a solvent for shellac to be used as a glaze, this office must hold that specially denatured alcohol or completely denatured alcohol can not be used as a solvent for shellac when the same is to be used in the preparation of any article of food.

Respectfully, ROYAL E. CABELL,
Commissioner.

Messrs. ——— ———, *New York.*

(T. D. 1793.)

Distilled spirits—Change in regulations relating to compensation of officers who reinspect spirits after reduction in the original package.

[Circular No. 40—Int. Rev. No. 746.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, August 15, 1912.

To collectors of internal revenue and others concerned:

The regulations relating to compensation of gauging officers who reinspect spirits after reduction in the original package (commencing at the foot of page 186 of No. 7, revised) are hereby modified so as to allow the gauging officer to collect from the person for whom such service is rendered a sum not to exceed 15 cents a package for the first 20 packages and 5 cents for each package thereafter, gauged in one day, at a distiller's free warehouse or at the establishment of a wholesale liquor dealer, and not to exceed 10 cents a package for the first 20 packages and 5 cents for each package thereafter, gauged in one day, at a distillery warehouse or at a general or special bonded warehouse. In addition to the charges above authorized, the officer will be allowed, when the service is performed at a distiller's free warehouse or at the establishment of a wholesale liquor dealer, to collect from the person for whom the service is rendered his actual and necessary traveling expenses in going to and returning from the place where he performs such service.

All regulations inconsistent herewith are hereby revoked as of September 15, 1912, the date on which the provisions of this circular are hereby made effective.

Collectors will furnish a copy of this circular to each gauging officer in their respective districts and to such distillers and wholesale liquor dealers therein as may be interested.

ROYAL E. CABELL, *Commissioner.*

Approved:
FRANKLIN MACVEAGH,
Secretary of the Treasury.

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(T. D. 1794.)

Revised list of alcoholic medicinal preparations for the sale of which special tax is required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 23, 1912.

To collectors of internal revenue, revenue agents, and others:

The accompanying list of alcoholic medicinal preparations which have been examined by this office and held to be insufficiently medicated to render them unfit for use as a beverage is published for the information of all concerned.

Special tax will be required for the sale of any of the preparations herein named, even though such sales are for medicinal use. The liabilities of dealers for sales *for medicinal use* of any of the preparations marked with an asterisk (*) will, however, be held to date from and after October 1, 1912.

The names of most of the preparations heretofore given on the various lists which have been published will be found included in this list, the only exceptions being those the manufacturers of which have revised their formulas to meet the requirements of this office or which are no longer on the market.

Special tax should not, therefore, be required for the sale for medicinal use of any alleged medicinal compound not on this list until this office has been communicated with and specific instructions received.

The preceding paragraph does not, however, apply to the class of compounds usually described by the term "Cocktail bitters," which are suitable for and usually used as beverages.

It having been found in various instances that there are several preparations of the same name on the market, the names of the manufacturers of the preparations examined by this office are here given, and it should be understood that only the preparations as compounded by the manufacturer whose name is given is embraced in this list.

Special tax will be required for the manufacture and sale of beef, wine, and iron, unless it contains at least the percentages of beef and iron given in the formula on page 1821 of the nineteenth edition of the United States Dispensatory or is otherwise sufficiently medicated to be unsuitable for use as a beverage. Special tax will also be required for the sale of the compound ordinarily sold under the name of rock, rye, and glycerine.

Collectors and revenue agents should continue to secure and forward to this office samples of preparations which they have reason to believe are or may be used as a beverage.

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List of Alcoholic Medicinal Preparations.

Name.	Manufacturer.
Ale and Beef	Ale & Beef Co., Dayton, Ohio.
Allen's Restorative Tonic	Faxon & Gallagher Drug Co., Kansas City, Mo.
*Alps Bitters	Peter Rostenkowski, Chicago, Ill.
American Alimentary Elixir	American Drug Store, 1115 Canal Street, New Orleans, La.
American Elixir	Beggs Manufacturing Co., Chicago, Ill.
American Stomach Bitters	American Drug Store, New Orleans, La.
Amer Picon	G. Picon (imported).
Angostura Aromatic Tincture Bitters	E. R. Behlers, St. Louis, Mo.
*Apshinte	The Cordial Panna Co., Cleveland, Ohio.
Arbaugh's Newport Bitters	Daniel Stewart Co., Indianapolis, Ind.
Aroma Bitters	V. Gautier, 287 Hudson Street, New York.
Aromatic Bitters	Hanigan Bros., Denver, Colo.
Aroma Stomach Bitters	J. S. Smith & Co., Burlington, Iowa.
*Aromatic Bitters	C. N. Prior, Middletown, N. Y.
*Aromatic Stomach Bitters	The S. Holtzman Co., Johnstown, Pa.
Atwood's La Grippe Specific	Excelsior Medicine Co., Chicago, Ill.
Angauer Bitters	Angauer Bitters Co., Chicago, Ill.
Angauer Kidney-Aid	Do.
Augustiner Health and Stomach Bitters	A. M. August, Milwaukee, Wis.
Beef, Wine and Iron	Waudby, Son & Co., Pittsburgh, Pa.
*Beef, Iron and Wine	Crown Supply Co., Pittsburgh, Pa.
*Beef, Iron and Wine	The Jarmuth Co., Providence, R. I.
*Beef, Iron and Wine	Lion Drug Co., Buffalo, N. Y.
*Beef, Iron and Wine	Owl Drug Co., San Francisco, Cal.
*Ben Hur Kidney and Liver Bitters	Fred. Reynolds, Detroit, Mich
Berg's Hawkeye Bitters	Berg Medicine Co., Des Moines, Iowa.
Belvedere Stomach Bitters	Loewy Drug Co., Baltimore, Md.
Bismark Laxative Bitters	C. Lange & Co., Chicago, Ill.
Bismarck's Royal Nerve Tonic	R. A. Smith & Co., Pana, Ill.
*Bitter Wine	Struzynski Bros., Chicago, Ill.
*Bitter Wine	Aug. W. Burggraf, Johnstown, Pa.
Bitters	The Atlantic Vineyard & Wine Co., Philadelphia, Pa.
Blackberry	Karles Medicine Co., Aberdeen, S. Dak.
Blackberry Cordial	International Extract Co., Philadelphia, Pa.
Blackberry Cordial	Irondequoit Wine Co., Rochester, N. Y.
Blackberry Cordial	Strother Drug Co., Lynchburg, Va.
Blackberry and Ginger Cordial	Standard Chemical Co., Fort Smith, Ark.
Black Tonic	Albert Niggemann, St. Louis, Mo.
Bonekamp Stomach Bitters	Geo. J. Fixmer, Springfield, Ill.
Bonekamp Bitters	J. S. Smith & Co., Burlington, Wis.
Botanic Bitters	F. E. Mayhew & Co., San Francisco, Cal.
Bradenberger's Colocynthis	Standard Chemical Co., Fort Smith, Ark.
Brod's Celery Pepsin Bitters	Jno. Brod Chemical Co., Chicago, Ill.
Brown's Utryme Tonic	A. E. & E. V. Brown Co., Mobile, Ala.
Brown's Aromatic Cordial Bitters	Chas. Leich & Co., sole agents, Evansville, Ind.
Brown's Vin Nerva Tonic	Brown Chemical Co., Nashville, Tenn.
Buckeye Bitters	Geo. Albert, Milwaukee, Wis.
Carpathian Bitters	L. J. Sulak Land Co., West, Tex.
Celery Bitters and Angostura	Frank J. Maus, Kalamazoo, Mich.
*Celery Extract	The P. S. Abbey Co., Kalamazoo, Mich.
Clarke's Rock Candy Cordial	Colburn, Birks & Co., Peoria, Ill.
Clayton & Russell's Stomach Bitters	Adams & Co. New York City.
Clifford's Cherry Cure	Standard Chemical Co., Fort Smith, Ark.
Clifford's Peruvian Elixir	Do.

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List of Alcoholic Medicinal Preparations—Continued.

Name.	Manufacturer.
Cinchona Bitters	Morris & Dickson Co., Shreveport, La.
Crescent Star Jamaica Ginger	Gulf Manufacturing Co., New Orleans, La.
Coca Wine	American Drug Store, 1115 Canal Street, New Orleans, La.
*Cocktail Bitters	Milburn & Co., Baltimore, Md.
Columbo Elixir	Columbo Elixir Co., Philadelphia, Pa.
Columbo Peptic Bitters	L. E. Jung & Co., New Orleans, La.
*Columbo Tonic Bitters	Iler & Co., Omaha, Nebr.
Cooper's Nerve Tonic	Muller & Co., Baltimore, Md.
Calasaya	Zwart's Pharmacy Co., St. Louis, Mo.
*Cordial Panna	The Cordial Panna Co., Cleveland, Ohio.
Crescent Tonic Bitters	Parker Blake Co., New Orleans, La.
*Cross Bitter Wine	Eugene Parisek Co., Chicago, Ill.
*Damana Gentian Bitters	Milburn & Co., Baltimore Md.
Dandelion Bitters	Beggs Manufacturing Co., Chicago, Ill.
Dandy Bracer	Dandy Bracer Co. Philadelphia, Pa.
De Witt's Stomach Bitters	E. C. De Witt & Co., Chicago, Ill.
*Didier's Bitters	J. A. Didier, Binghamton, N. Y.
Dr. Brown's Blackberry Cordial	Texas Drug Co., Dallas, Tex.
Dr. Brown's Tonic Bitters	Brown Chemical Co., Nashville, Tenn.
Dr. Bouvier's Buchu Gin	Dr. Bouvier's Specialty Co., Louisville, Ky.
Dr. Bergelt's Magen Bitters	Imported.
Dr. Fowler's Meat and Malt	Meat & Malt Co., Louisville, Ky.
Dr. Gray's Tonic Bitters	Central Botanical Co., Cherry Creek, N. Y.
Dr. Hortenbach Stomach Bitters	Dr. Hortenbach, Minneapolis, Minn.
Dr. Hopkins Union Stomach Bitters	F. S. Amidon, Hartford, Conn.
Dr. Hoffman's Golden Bitters	F. Trandt, St. Louis, Mo.
Dr. Rattinger's Bitters	Rattinger's Medical Co., Sappington, Mo.
Dr. Sterki's Ohio Bitters	Dr. V. Sterki & Co., New Philadelphia, Ohio.
Dr. Sherman's Peruvian Tonic and Systematizer.	Des Moines Pharmacal Co., Des Moines, Iowa.
Dr. Worme's Gesundheit Bitters	J. D. Heimsoth, Chicago, Ill.
Dozier's Apple Bitters	Bitter Apple Bitters Co., Hattiesburg, Miss.
*Drake's Plantation Bitters	P. H. Drake & Co., Brooklyn, N. Y.
Dubonnet Wine	Imported.
Dubonnet	Do.
Ducro's Alimentary Elixir	Do.
Duffy's Malt Whiskey	Duffy Malt Whiskey Co., Rochester, N. Y.
Elixir of Bitter Wine	Pleasant Tonic Bitters Co., Chicago, Ill.
Elixir of Bitter Wine	V. Bokr, Chicago, Ill.
Elixir Calisaya	Reid, Yeomans & Cubit, New York City.
Elixir Calisaya Bark	Upjohn Co., New York, N. Y.
Eucalyptus Cordial	Zwarts Pharmacy Co., St. Louis, Mo.
Eureka Stomach Bitters	Iowa Drug Co., Des Moines, Iowa.
E. Z. Laxative Bitters	Carmelite Bitters Co., New York, N. Y
Famous Wiener Bitters	Foxman Bros., Rock Island, Ill.
*Faxon's Beef, Iron and Wine	Faxon Williams & Faxon, Buffalo. N. Y.
Fernet-Carlisi Fernet Bitters	C. Carlisi Co., New York City.
*Ferro-China Bascal	Basilea & Calandra, New York City.
Ferro-China Berna	W. P. Bernagozzi, New York City.
Ferro-China Bisleri	(Felice Bisleri) Imported.
*Ferro-China-Biotto	Vittorio Biotto, New York City.
Ferro-China Carlisi Tonic Bitters	C. Carlisi Co., New York City.
Ferro-China-Citro Bitters	G. Citro & Co., Hoboken, N. J.
*Ferro-China-Columbia	Columbia Distilling Co., Albany, N. Y.
Ferro-China di Carlo	Lange Bros., New York City.

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List of Alcoholic Medicinal Preparations—Continued.

Name.	Manufacturer.
*Ferro-China Frantantuono[a]	Jos. Frantantuono, Providence, R. I.
Ferro-China Ideal	Marrone & Lohr, Utica, N. Y.
Ferro-China-Salus	Italo-American Liquor Mfg. Co., New York City.
*Ferro-China Tito Manlio	Gennaro T. Manlio, Philadelphia, Pa.
Ferro-China-Trionfo	Basilea & Calandra, New York City.
Ferro-China Universale	Imported.
*Ferro-China Vitanova	Steinhardt Bros. & Co., New York City.
Ferro Quina Bitters	D. P. Rossi, San Francisco, Cal.
*Finaflavora	The P. S. Abbey Co., Kalamazoo, Mich.
Fine Old Bitter Wine	Strusynski Bros., Chicago, Ill.
F. Miller & Co.'s Stomach Bitters	
Folger's Aromatic Bitters	M. D. Folger & Sons, Grand Rapids, Mich.
*Fort Henry Ginger Compound	Reed, Robb & Breiding, Wheeling, W. Va.
Gastropohan	Edward Rimsa, Chicago, Ill.
Gentian Bitters	Evans Smith Drug Co., Kansas City, Kans.
Genuine Bohemian Malted Bitter Wine Tonic.	Edward Rimsa, Chicago, Ill.
Germania Herb, Root, and Fruit Tonic Bitters.	Dr. F. G. Nordman, Chicago, Ill.
German Stomach Bitters	Geo. Kuevers, Granite City, Ill.
*German Stomach Bitters	Wm. W. Torge, Waukesha, Wis.
Ginger Tonic	Loewy Drug Co., Baltimore, Md.
Ginseng Cordial	American Ginseng Medical Co., Syracuse, N. Y.
Glycerine Tonic (Elixir Pepsin)	W. P. Underhill, Concord, N. H.
*Glycerine Tonic	G. C. Kimmerer, Canajoharie, N. Y.
Graham's Brand Orange Bitters	Chas. Jacquin, New York City.
Green's Chill Tonic	M. V. Green, Son & Co., Selma, N. C.
Greiner's Blackberry Cordial	Greiner-Kelly Drug Co.. Dallas, Tex.
*Gross Bros. Blood and Liver Tonic	Gross Bros.. Ill.
Harrison's Quinine Tonic	I. X. L. Chemical Co., Chicago, Ill.
Health Bitters	H. Bitzegeio, Chicago, Ill.
*Health Bitters	Jos. G. Sporrer & Co., Toledo, Ohio.
Herb Bitters	Otto F. Lents, Petersburg, Ill.
Herbs Bitters	Herb Medicine Co. Reading, Pa.
Herbton	Hooper Medical Co., Hillsboro, Tex.
Heublein's Calisaya Bitters	G. F. Heublien & Bro., New York City.
Hop Bitters	Hop Bitters Mfg. Co., Rochester, N. Y.
*Horke Vino Bitter Wine	Michael Bosak, Scranton, Pa.
Indian Stomach Bitters	Dr. D. Winegardner, Hanna, Okla.
I. X. L. Bitters	I. X. L. Chemical Co., Chicago, Ill.
Jack Pot Laxative Bitter Tonic	J. B. Scheuer Co., Chicago, Ill.
*Jack's Indian Tonic	W. L. B. Jack, Portsmouth, Ohio.
Jaffe's Intrinsic Tonic	Jaffe Wine Co., Sacramento, Cal.
Jerome's Dandelion Stomach Bitters	Jerome Chemical Co., St. Louis, Mo.
Johnston's Cherry Elixir	Parker Blake Co., New Orleans, La.
Jones Stomach Bitters	Natchez Drug Co., Natchez, Miss.
June-Kola	Beggs Manufacturing Co., Chicago, Ill.
Juniper Kidney Cure	Juniper Kidney Cure Co. Fort Smith, Ark.
Karle's German Stomach Bitters	Karle German Bitters Co. Aberdeen, S. Dak
Karlsbader Stomach Bitters	Jos. Landshut, Pittsburgh, Pa
Katarno	Katarno Co., New York City.
K. K. K.	Morris & Dickson Co., Shreveport, La.
Koehler's Stomach Bitters	Koehler Bitters Co.. New York City.

[a] See T. D. 1805, removing this name from this list.

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List of Alcoholic Medicinal Preparations—Continued.

Name.	Manufacturer
Kahn's Iron and Malt Whiskey	Kahn Brothers, New York City, N. Y.
*Kennedy's East India Bitters	Iler & Co., Omaha, Nebr.
*Kidiniwell	Brown Drug Co., Sioux Falls, S. Dak.
Ko-Ca-Ama	The Wm. Brooks Medicine Co. Russellville. Ark.
Kola and Celery Bitters	Milburn & Co., Baltimore, Md.
Kola Wine	Reid, Yeomans & Cubit, New York City.
Kreuzberger's Stomach Bitters	R. Kreuzberger, Logansport, Ind.
Krummel's Bonekamp Maag Bitters	Hry. Krummel, New York City
Kudros	A. M. Hellmann & Co., St. Louis, Mo
Laxa Bark Tonic	Natchez Drug Co., Natchez, Miss.
Lee's Celebrated Stomach Bitter	Lee's Anti-Trust Medicine Co., Joplin, Mo.
*Lekko Stomach Bitters	Struzynski Bros., Chicago, Ill.
Lemon Ginger	Ballard Snow Liniment Co., St. Louis, Mo.
Liverine	T. S. Mitchell Co., Providence, R. I.
Lutz Stomach Bitters	Chas. M. Lutz, Reading, Pa.
*Lyons Stomach Bitters	Lyons Bitters Co., Chicago, Ill.
Magador Bitters	E. J. Rose & Co., Tacoma, Wash
Magen Bitters	A. J. Waberksy, Chicago, Ill.
*Magen Bitters	Mrs. Ingeborg Rosmer, Milwaukee, Wis.
Mark's Famous Stomach Bitters	R. Marks, Milwaukee, Wis.
McCorrison's Compound of Golden Seal	O. S. McCorrison, Union, Me.
Meta Multa	Bernheim Distilling Co., Louisville, Ky.
*Mexican Stomach Bitters	Iler & Co., Omaha, Nebr
Mikado Wine Tonic	Mikado Medicine Co., West Manchester, N. H.
Milburn's Kola & Celery Bitters	Milburn & Co., Baltimore, Md.
Miller Brand Bitters	Pure Food Cordial Co., New York City.
Miod Honey Wine	Struzynski Bros., Chicago, Ill.
*Nature's Remedy for Kidney Troubles and Blood Poisoning	Dr. J. T. Sumpter, Bowling Green, Ky.
Neuropin	J. B. Scheuer Co., Chicago, Ill.
Newton's Nutritive Elixir	Parker-Blake Co., New Orleans.
Novak's Stomach Elixir	Jno. Novak, Chicago, Ill.
Obermuller's Bitters	Jos. Bollenbeck, Madison, Wis.
O'Hare's Bitters	O'Hare Bitters Co., Pittsburgh, Pa.
Old Dr. Scroggin's Bitters	A. J. Adye, Adyeville, Ind.
Old Dr. Jacques Stomach Bitters	D. F. Giles & Co., Concord, N. H.
Orange Bitters	A. L. Joyce, Traverse City, Mich.
Our Ginger Brandy	Rex Bitters Co, Chicago, Ill.
Ozark Stomach Bitters	Lee's Anti-Trust Medicine Co., Joplin, Mo.
Pale Orange Bitters	Field, Son & Co., London, England.
Panama Bitters	Richardson Drug Co., Omaha, Nebr.
*Panama Bitters	W. R. Reeve, Dorchester, Mass.
*Parker's Beef, Wine, and Iron	Parker-Brown Co., Pittsburgh, Pa
Pepsin Stomach Bitters	(E. L. Arp) Imported
Peptonic Stomach Bitters	Ross, Flowers & Co., Chicago and New York.
*Peruvian Bitters	Reed Robb & Breiding, Wheeling, W. Va.
*Peter Paul Stomach Bitters	Paul P. Fasbender, Detroit, Mich.
Peychaud's Bitter Wine Cordial	L. E. Jung & Co., New Orleans, La
Pilsener Bitter Wine	Prenstat Bitters Co., West, Tex.
Pioneer Ginger Bitters	Dr. Koehler Medicine Co., Appleton. W
Pond's Ginger Brandy	Pond's Bitters Co., Chicago, Ill.
Pond's Rock and Rye	Do
Quinquina Dobonnet	Imported

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List of Alcoholic Medicinal Preparations—Continued.

Name.	Manufacturer.
*Rex Ginger and Brandy Tonic	Rex Bitters Co., Chicago, Ill.
*Rex Ginger	Do.
Rheinstrom's Stomach Bitters	Rheinstrom Bros., Cincinnati, Ohio.
Riley's Kidney Cure	Jas. S Riley Hayne, N. C.
Rimsovo Malto-Sove Vino Chino	Ed. Rimsa, Chicago, Ill.
Rockandy Cough Cure	
*Rosolio	The Cordial Panna Co., Cleveland, Ohio.
Royal Pepsin Tonic	L. & A. Scharff, St. Louis Mo.
*Royal Pepsin Stomach Bitters	Do.
*Sarasina Stomach Bitters	Wm. Blech, New York City.
St. Rafael Quinquina	Imported Scheetz.
Scheets Bitter Cordial	Percy R. Hentz, Pittsburgh, Pa.
*Schier's Famous Bitters	Wendelin Schier, Alexandria Ind.
*Schmit's Celebrated Strengthening Bitt rs	Geo. W. Tepe, Evansville, Ind
*Schroeder's German Bitters	Milburn & Co., Baltimore, Md.
Simon's Aromatic Stomach Bitters	Samuel B. Schein, St. Paul, Minn.
Sirena Tonic	Sirena Manufacturing Co., New York City.
Smart Weed	Francis Cropper Co., Chicago, Ill.
Smith's Bitters	Van Natta Drug Co., St. Joseph, Mo.
Smith's Vitalizing Bitters	Ben Smith, Scranton, Pa.
Steinkonig's Stomach Bitters	Adam Steinkonig, Cincinnati, Ohio.
Stomach Bitters	Imported by J. G. & J. Boker, New York City
Stoughton Bitters	A. L. Joyce, Traverse City, Mich.
Strauss Exhilarator	Wm. H. Strauss, Reading Pa.
Sure Thing Tonic	Furst Bros., Cincinnati, Ohio.
*Tamerina	Ellis-Lillybeck Drug Co. Memphis Tenn.
Tatra	B. Zeman, Chicago, Ill.
*Tokay Quinine Iron Wine	Burger & Erdeky, Chicago, Ill.
Tolu Rock and Rye	
True's Magnetic Cordial	Standard Chemical Co., Fort Smith, Ark.
U-Go	Fritz T. Schmidt & Sons, Davenport, Iowa.
Uncle Josh's Dyspepsia Cure	Dr. Worthington's Drug Co., Birmingham, Ala.
Underberg's Boonekamp Maag Bitters	Imported by Luyties Bros., New York City.
*Vigo Bitters	F. C. Altmeier & Co., Chicago, Ill.
Vin de Michael	Imported.
Vin Mariani	Mariani & Co. New York City.
Vino-Kolafra	Mead, Johnson & Co., Jersey City, N. J.
Walker's Tonic	Dreyfuss, Weil & Co., Paducah, Ky.
Warner's Stomach Bitters	Warner, Friday & Co., Sioux City, Iowa.
Webb's A No. 1 Tonic	Webb's Co-Operative Co., Sacramento, Cal.
Westphalia Stomach Bitters	E. R Behlers, St. Louis Mo.
White Cross Bitters	V. Gautier, New York City.
White's Dyspepsia Remedy	W. L. White & Co., Louisville, Ky.
*Will Do	The Will Do Co., Detroit, Mich.
Williams's Kidney Relief	Parker, Blake & Co., New Orleans, La.
*Wine of Chenstohow	Skarzynski & Co., Buffalo N. Y.
*Wine of Pomelo, with Beef and Iron	Irondequoit Wine Co., Rochester, N. Y.
Woodbury Brand Bitters	Steinhart Bros. & Co., New York City.
Zeman's Medicinal Bitter Wine	B. Zeman, Chicago, Ill.
Zien Stomach Bitters	Zien Bros., Milwaukee, Wis.
Zig-Zag	Walker's Tonic Co., Paducah Ky.

* See T. D. 1805, removing this name from this list.

Royal E. Cabell, *Commissioner.*

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(T. D. 1795.)

Compromises.

Favorable consideration will not be given to offers in compromise where the violation of law is deliberate and with intent to defraud and the evidence is sufficient to convict.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 10, 1912.

SIR: This office has under consideration the proposal of ——— ——— to pay $——— in addition to the $——— previously deposited, making a total of $———, together with the cost of guarding the distillery, in compromise of the civil and criminal liabilities charged against him.

In this connection, I desire to state that it is the belief of this office that section 3229, Revised Statutes, was enacted by Congress for the purpose of affording relief to persons who have unintentionally and without any fraudulent design violated some of the provisions of the internal revenue laws, many of which are exceedingly drastic and for obvious reasons do not make intent a factor in the offense. It is equally of the opinion, however, that, where the violation is deliberate and with intent to defraud, no money penalty, however large, should be accepted by way of compromise in lieu of prosecution, provided only that the evidence is of such character as to afford reasonable grounds for the belief that a conviction can be secured.

This policy has been followed by this office for the last few years with gratifying results, and it is believed that, when it becomes generally known among lawbreakers that when caught they must answer for their offenses in the courts and can not escape by a mere money payment through compromise, the result will be far more beneficial to the interests of the Government in the long run than the acceptance of compromise offers.

Having the foregoing statement of policy in mind, you are requested to advise this office as to your views of the evidence in the case of ——— ———, with your recommendation as to the propriety of acceptance of the offer made.

Please state court costs incurred.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. ——— ———,
United States Attorney.

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(T. D. 1796.)

Mining corporations—Special excise tax—Court decision.

1. MINING CORPORATIONS.

These corporations are included in the act of August 5, 1909, imposing special excise tax.

2. NET INCOME.

The net income of a mining company is the value of the ore extracted after deducting the cost of extraction and treatment, and cost of administering the company, and after a reasonable reservation for contingencies.

3. DEPRECIATION DEFINED.

The value of the ore extracted can not be charged off as depreciation in determining net income.

4. NO CONSTITUTIONAL OBJECTION.

The contention that the excise tax is a tax upon the *corpus* of the estate and thus a direct tax within the prohibition of the Constitution is not sustained.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1912.

The appended decision of the District Court of the United States for the District of Colorado in the case of Stratton's Independence (Limited) *v.* F. W. Howbert, collector of internal revenue, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF COLORADO. No. 5781.

Stratton's Independence (Limited) v. F. W. Howbert, collector of internal revenue.

POLK, *Judge:* This case is pending at this time upon a motion for a peremptory instruction presented respectively by both plaintiff and defendant. This makes the case one of law for the court and leaves nothing to the jury but simply to sign such a verdict as the court shall, under the law, direct.

The limitations upon the time of the court have precluded the filing of a formal opinion upon this matter, which the court recognizes to be one of great importance. At the same time the latter consideration leads the court to the view that it would not be doing full justice to all concerned, especially in view of the very thorough argument, were it not at least to indicate the grounds upon which the conclusions presently to be announced are reached.

The case is presented to the court and to the jury upon a stipulation as to the facts. The stipulation concludes with an agreement that three questions of law result from the record. The second question was waived upon the argument by counsel for the Government; the third question, while not waived by counsel for the plaintiff, was not argued and is not considered to be for decision. The only question pressed at the hearing was the following:

Is the value of the ore in place that was extracted from the mining property of the plaintiff during the years in question properly allowable as depreciation in estimating the net income of the plaintiff subject to taxation under the act of Congress of August 5, 1909? (35 Stats., chap. 6, 11, 112–117.)

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The determination of this question involves three matters: First, the meaning of "net income" as used in this statute; second, the meaning of "a reasonable allowance for depreciation of property," as therein used; and, third, a determination of whether the contention of the Government is met by any constitutional limitations.

As to what is meant by the words "net income" the relevancy of this results, of course, from the fact that the statute imposes an excise tax of 1 per cent on such net income. Does "net income" as thus used contemplate an allowance in favor of the company for ore in place extracted from the property or is it to be determined without such allowance? According to ordinary understanding it is undoubtedly true that in the operation of such corporations the ore extracted is not deemed an element to be reckoned with in determining the net income. In popular sense the net income of mining properties is the value of what is extracted after deducting the cost of extraction and treatment, and the cost of administering the company which may be conducting the operations, and finally after a reasonable reservation for contingencies. This is true not only as a matter of general understanding, but has been held uniformly by the courts to be a proper rule in determining whether or not a dividend is declarable by such companies. The doctrine as deduced from People *v.* Roberts (156 N. Y., 585), Morawets on Private Corporations, section 442, and other authorities, is that the net income of a mining property for the purposes of dividends does not take into account so-called waste of the property by reason of the extraction of ore in place, but that such is to be determined by a comparison of the proceeds of the company, after a deduction for operation, expenses of the company, and such reasonable contingencies as may in the light of experience be expected. The following English cases, cited by the United States attorney, are in point upon this: The King *v.* Atwood (30 Revised Reports, 322); Lee *v.* Newchatel Asphelte Co. (41 Chancery Div., p. 1); Coltness Iron Co. *v.* Black, assessor (6th Appealed Cases, p. 315); Wilmer *v.* McNamara & Co. (Ltd.) (1895, Second Chancery, p. 245).

If, therefore, the net income is not affected for the purposes of dividends by the amount of ore extracted, neither should it be affected by that circumstance for the purpose of an excise tax. We conclude, therefore, that the words "net income" do not carry with them any contemplation of law that there shall be such a deduction as plaintiffs here claim.

Coming now to the second provision of the statute and the one upon which the argument has largely been rested, does the provision requiring "a reasonable allowance for the depreciation of property" require a deduction for ore in place extracted therefrom? It is claimed by the plaintiff that this provision distinguishes the case from the American and English authorities above referred to. This contention, if sustained, is of far-reaching effect. Its practical result will be to free mining companies from any substantial obligations under this statute, since the value of ore in place when extracted, plus the cost of extraction and the several other items which are properly allowable under the statute as against the proceeds therefrom, will, in practically all instances, leave little or nothing as the net income to be assessed by the Government. Of course, the results of a given construction are not to be calculated with if the intent of the statute is plain, and if the statutory intent is clear that such corporations are exempt the result is not a matter of judicial concern. At the same time, in determining what is the meaning of a statute, the effect of a construction contended for is of some relevancy as throwing light upon the congressional intent. We have here a class of corporations which owe their possession of property at all to a very liberal system of our Government, by which mining property is acquired, being simply by possession, development, and final payment of what is in many cases an insignificant amount as compared with the value of the property. We are also dealing with a class of corporations to whom the use of the corporate functions is perhaps of more value and importance than in any other branch of industry. Mining is essentially a class of activity which owes its life to aggregate contributions rather than individual enter-

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prise. The statute, which finds its justification in the power to tax the carrying on or doing business, is peculiarly applicable to mining corporations in which the corporate function is of such value. Viewing the matter from these two standpoints, therefore—one the source from which the property comes and the other the value of the corporate life—there results an initial presumption that Congress had in mind this class of corporations, along with others, and that unless the terms of the statute otherwise demonstrate, they are to be considered as included within the provisions of the act.

The ordinary definition of depreciation is the lessening of value. As applied to mining properties, the word carries with it, as in the case of any other business, the idea of deterioration in visible improvements, such as mills and other surface structures and perhaps the underground improvements, so far as they are put in by the hand of man, and, therefore, speaking popularly, when we think of depreciation in mining properties we think of a lessening in value by time, or perhaps by accident, of those physical elements which go to develop and to improve the property. Now, does this meaning, commonly entertained and accepted and which is common to every class of corporations, become enlarged in case of mining companies, so as to make the extraction of ore likewise an element of depreciation? The court's view is that it does not. This conclusion is in part induced by the reasons which have been above discussed in connection with the term "net income" and in part by the peculiar nature of the mining business. This latter is *sui generis*. It lives by dying. It is a business that is intrinsically uncertain. The segregation of part of a stock of goods is a definite detraction from the whole. The excavation of a body of ore, however, may reveal other bodies and result in immeasurable increment. The taking out of ore, while in a sense depreciation from the body, very often leads to the revealing of still larger bodies, and thus results not in a lessening of the value of the claims, but in a great increase in such value. Mining excavation, when properly conducted, is very often more a development than a waste or a detraction. As applied to this class of corporation, having as its purpose to exhaust—it may be a year hence or a hundred years hence—the body of ore for profit, the mere fact that ore may be extracted does not, in my judgment, make the value of such ore an element to be classed and deducted as a depreciation of the property. The court, therefore, holds as to this second provision of the statute that the extraction of ore does not constitute a credit in favor of mining companies upon the account between them and the Government when this excise tax is to be assessed.

It only remains to determine whether the effect of this would be to lead to constitutional barriers, and thus either to demonstrate that Congress could not have meant what the Government here contends, or, second, that if Congress did mean this, it was attempting to do that which is contrary to the supreme law of the land.

It is argued very forcefully by counsel for the plaintiff that the effect of this contention of the Government, if sustained, is to impose a tax upon the corpus of its estate, and thus to impose a direct tax within the prohibition of the Constitution. It is said that if this contention be sustained, then there will be a tax of 1 per cent, as an excise tax for the use of the corporate functions, put upon every dollar's worth of ore taken out. It is said that Congress could not have meant this, because Congress presumably intended to legislate in view of constitutional limitations, and the Constitution does not permit a direct tax save upon the basis of population. The case of Flint *v.* Stone Tracy Co. (220 U. S., 108, 165) is cited as sustaining this position. An examination of that case, however, leads to the conclusion that rather than establishing this contention it establishes the contrary. It shows that counsel confuse between what is selected as an object of taxation and what is used simply as a standard by which the excise tax may be measured. In the Flint-Stone case there was a very strong contention that the present tax could not be upheld for the reason that many of the elements of income upon which the 1 per cent operates are such as had been held in the income tax case (Pollock *v.* Farmers' Loan & Trust Co., 157

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U. S., 429; 158 U. S., 601) not to be the subject of taxation by Congress save according to population. The court, however, in Flint *v.* Stone, holds distinctly that the law-making power may adopt as a basis for assessing an excise tax that which, if attempted as a matter of direct taxation, would not be at all permissible. In other words, the doctrine is that the use of this nontaxable basis as a standard for an excise tax is permitted, whereas a tax directed against such property, nontaxable save under constitutional conditions not complied with, would, of course, not be permitted.

The court says, page 165:

The measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed.

This case reviews the prior cases, including the Society for Savings *v.* Coite (6 Wall., 594), and demonstrates that this is a rule which the Supreme Court of the United States has consistently adhered to. It follows, therefore, that this last question must likewise be resolved against the complainant and that a verdict must go accordingly.

The effect of this rule is, of course, simply to eliminate any element of the complaint as a basis for recovery which rests upon this contention of law. However, the court is advised by counsel from the argument that there are certain items in the complaint which, independent of this, are due from the Government—some matters connected with taxes and the like; and if counsel have agreed, as they intimated they would, upon this amount, the court will hand the jury a verdict finding in favor of the plaintiff for such sum confessedly due.

September 3, 1912.

(T. D. 1797.)

Oleomargarine—Intent to defraud—Court decision.

1. MANUFACTURER.

   The mixing of white oleomargarine with artificial coloration so that it looks like butter is within the definition of a manufacturer of oleomargarine.

2. INDICTMENT.

   Essentials of an indictment under section 17 of the oleomargarine act. It is not necessary to allege how the defendant attempted to commit fraud.

3. "ANY PERSON."

   The words "any person" in section 17 are not limited to persons who have been "licensed."

4. EVIDENCE.

   In order to convict it is not necessary that some witness saw each defendant in the act of mixing coloring matter with white oleomargarine. Evidence of sale or removal of the oleomargarine not required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1912.

The appended decision of the United States Circuit Court of Appeals, Eighth Circuit, in the case of Fred D. May et al., plaintiffs in error, *v.* United States, defendant in error, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

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UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT. No. 3663. MAY TERM, 1912.

Fred D. May et al., plaintiffs in error, v. *United States, defendant in error.*

IN ERROR to the District Court of the United States for the Eastern District of Missouri.

Before SANBORN and HOOK, Circuit Judges, and WILLARD, District Judge.

WILLARD, *District Judge*, delivered the opinion of the court.

Plaintiffs in error, Fred D. May, Thomas B. May, William M. Johnson, and E. W. Bailey were convicted under the second count of an indictment which charged a violation of article 4 of the oleomargarine act of August 2, 1886 (24 Stat., 209). This section punishes one who carries on the business of manufacturing oleomargarine without having paid the special tax therefor. They were also convicted under the third count, which charged a violation of section 17 of the same act. No objection to the sufficiency of the second count is here urged. It is claimed, however, that the third count is insufficient. This point was raised in the court below by a demurrer.

The third count is as follows:

That Fred D. May, Thomas B. May, William M. Johnson, and E. W. Bailey, whose Christian name is to the grand jurors aforesaid unknown, heretofore, to-wit: On or about the 29th day of November, 1910, within the division and district aforesaid, and within the jurisdiction of the court aforesaid, at No. 3536 Morgan Street, in the city of St. Louis, State of Missouri, they the said Fred D. May, Thomas B. May, William M. Johnson and E. W. Bailey, whose Christian name is to the grand jurors aforesaid unknown, being then and there persons engaged in carrying on the business of a manufacturer of colored oleomargarine at said No. 3536 Morgan Street, in the city of St. Louis, State of Missouri, under the name of the Clayton Creamery, did then and there knowingly, willfully, fraudulently, and feloniously attempt to defraud the United States of the tax imposed by law upon colored oleomargarine of 10 cents per pound on each pound of colored oleomargarine so manufactured, to-wit: Ten cents per pound on 120 pounds of colored oleomargarine then and there produced by them, the said Fred D. May, Thomas B. May, William M. Johnson, and E. W. Bailey, whose Christian name is to the grand jurors aforesaid unknown.

Section 17 is as follows:

That whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

The essential elements of the offense defined in section 17 are: (1) That the defendant is engaged in carrying on the business of manufacturing oleomargarine. (2) That he has produced oleomargarine. (3) That he has attempted to defraud the United States. All of these are found in the third count. The claim of the defendants, however, is that before the offense can be committed the oleomargarine produced must have become subject to the tax. They call attention to section 8 of the act which provides:

"That upon oleomargarine which shall be manufactured and sold, or removed for consumption or use," there shall be assessed a tax, and they say that the indictment should have alleged that the defendants had attempted either to sell it, or to remove it for consumption, or to remove it for use; and they insist that an allegation of this kind was an essential part of the indictment.

Whatever may be said of this claim when the charge is that the defendant has defrauded the United States, it can not be sustained when the charge is that the defendant has attempted to defraud the United States. Conclusive evidence might be produced to the effect that a defendant had made plans to construct and operate an illegal factory for the manufacture of oleomargarine, to manufacture it, and to sell it without payment of the tax. It might also be further shown conclusively that, in

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pursuance of this illegal plan, he had erected a factory and had commenced to manufacture and had actually manufactured oleomargarine with the intent of selling it without paying the tax, but that before he had sold or removed, or attempted to sell or remove, any part of it, his operations were interfered with by the authorities. Can it be said in such a case that he has not attempted to defraud the United States? At least, when a defendant's operations have proceeded so far as to show conclusively that he has produced oleomargarine with the intent to defraud the Government out of the tax thereon, there is an attempt to defraud such as is mentioned in section 17, although he has neither sold nor removed nor attempted to sell or remove any of the product.

It is further said, with reference to this count, that it does not advise the defendant of the manner in which he attempted to commit the fraud, so as to enable him to prepare his defense. It is to be noted that section 17 does not declare it an offense to commit the fraud in any particular way. If it did, then it would be necessary to allege the manner in which the act was done. But as the section stands it is an offense if the Government is defrauded by any means or method. As was said in United States *v.* Simmons (96 U. S. 360, p. 364):

> The intent to defraud the United States is of the very essence of the offense; and its existence in connection with the business of distilling being distinctly charged, must be established by satisfactory evidence. Such intent may, however, be manifested by so many acts upon the part of the accused, covering such a long period of time, as to render it difficult, if not wholly impracticable, to aver with any degree of certainty all the essential facts from which it may be fairly inferred.

To have alleged in this indictment how the defendants attempted to defraud the United States would have required a statement of much of the evidence presented at the trial. The count, as it appears, advises the defendants of the time when the act was committed, namely, on November 29, 1910; it advises them where it was committed, namely, at 3536 Morgan Street, in the city of St. Louis, Mo.; it advises them of the name under which it is claimed they were doing business, namely, the Clayton Creamery; it advises them of the amount of oleomargarine produced, namely, 120 pounds.

As to the sufficiency of this count the case is, we think, covered by the case of Armour Packing Company *v.* United States (153 Fed. Rep., p. 1). This court there said, on page 16:

> It is conceded that, where a crime is a statutory one, the indictment must set forth with clearness and certainty every essential element of which it is composed. It must portray the facts which the pleader claims constitute the alleged transgression so distinctly as to advise the accused of the charge which he has to meet and to give him a fair opportunity to prepare his defense, so particularly as to enable him to avail himself of a conviction or an acquittal in defense of another prosecution for the same offense, and so clearly that the court may be able to determine whether or not the facts there stated are sufficient to support a conviction. (Citing cases.) The indictment in this case pleads the names of the carriers that transported the property, the date and place of the delivery of the goods to the initial carrier and of the receipt of the concession by the shipper, a description of the specific articles shipped, the filed and published rate, the less rate at which the goods were transported, and the amount of the concession, the place of shipment, and the point of destination of the property, and the route over which it was transported. Here were averments of facts sufficient to clearly advise the defendant of the offense with which it was charged, to give it ample opportunity to prepare its defense, to enable it to avail itself of a conviction or an acquittal in the case of another prosecution for the same crime, and to qualify the court to determine whether the facts stated constituted an offense. The particular device by which the concession and transportation were obtained was not an essential ingredient of the offense charged, because the latter might well exist, whatever the device, and whether or not there was one, and hence the indictment portrayed every material element of the crime without an averment of this device. United States *v.* Tozer (37 Fed., 635, 637). The substance of the crime of receiving a rebate or concession under the Elkins Act is the solicitation, acceptance, or receipt thereof, whereby property in interstate or foreign commerce is transported at less than the regular rate. The device whereby the receipt and transportation are obtained is not an essential element of the crime, and it is unnecessary to plead it in the indictment.

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It is to be observed that the law there under consideration provided that it should be unlawful for any person to receive any rebate or concession whereby property should "by any device whatever" be transported at a less rate than that named in the published tariffs, yet the indictment there under consideration did not allege what the device was by which the rebate had been secured. The judgment of this court in that case was affirmed by the Supreme Court, and the decision of that court is reported in 209 U. S., 56, under the name of Armour Packing Company *v.* United States. It was there said, on page 83:

It is alleged that the indictment is insufficient in that it fails to set out the kind of device by which traffic was obtained, and of what the concession consisted, and how it was granted. Authorities are cited to the proposition that in statutory offenses every element must be distinctly charged and alleged. This court has frequently had occasion to hold that the accused is entitled to know the nature and cause of the accusation against him, and that a charge must be sufficiently definite to enable him to make his defense and avail himself of the record of conviction or acquittal for his protection against further prosecutions and to inform the court of the facts charged, so that it may decide as to their sufficiency in law to support a conviction, if one be had, and the elements of the offense must be set forth in the indictment with reasonable particularity of time, place, and circumstances. And it is true it is not always sufficient to charge statutory offenses in the language of the statutes, and where the offense includes generic terms it is not sufficient that the indictment charge the offense in the same generic terms, but it must state the particulars. United States *v.* Hess (124 U. S., 483); Evans *v.* United States (153 U. S., 584). But an indictment which distinctly and clearly charges each and every element of the offense intended to be charged and distinctly advises the defendant of what he is to meet at the trial is sufficient.

And in Ledbetter *v.* United States (170 U. S., 606, 612), Mr. Justice Brown, speaking for the court, said:

"Notwithstanding the cases above cited from our reports, the general rule still holds good that upon an indictment for a statutory offense the offense may be described in the words of the statutes, and it is for the defendant to show that greater particularity is required by reason of the omission from the statute of some element of the offense."

Indictments in some respects similar to this one have been under consideration in the cases of Hardesty *v.* United States (168 Fed. Rep., 25); Enders *v.* United States (187 Fed. Rep., 754). The demurrer to the third count was properly overruled.

The evidence at the trial did not show that the defendants manufactured white oleomargarine; they therefore did not come within the definition of a manufacturer contained in the original act. It was proven that they mixed white oleomargarine with artificial coloration so that it looked like butter. This brought them within the definition of a manufacturer found in the amendment of May 9, 1902 (32 Stat., 194). It is claimed by the defendants, inasmuch as when section 17 was enacted the only manufacturer was a person who made white oleomargarine, that that section can not apply to these defendants who became manufacturers by an act subsequent thereto. There is nothing in this contention. If it were sustained, it would not be necessary for persons to mix coloring matter with white oleomargarine to pay a license tax of $600 a year. Nor would any of the other sections of the original law which refer to manufacturers apply to those who became such under the act of 1902. In order to make such sections applicable, it was not necessary to reenact them. There is no difficulty in applying the forfeiture provision in section 17 to such a condition as is found in this case. These defendants had a factory and a manufacturing apparatus, such as it was. They had the raw materials for the manufacture of the new product, namely, white oleomargarine and the coloring matter.

It is further claimed by the defendants that section 17 applies only to persons who have received a license to manufacture oleomargarine, and that these defendants, never having taken out such license, can not be convicted. To so construe the section would be to add thereto the word "licensed" so that it would read "whenever a licensed person," or to add other words indicating that it was limited to persons who had received such a license as has been mentioned.

If it clearly appeared that it was the intention of Congress to so limit that section, possibly authorities might be found which would support such an interlineation. But

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a moment's reflection will show that such never could have been the intention of the legislature. If such were the law, a person who intended to violate section 17 would purposely fail to take out a license as a manufacturer, for in such a case he could not be imprisoned in the penitentiary. He could only be punished for a violation of section 4, the penalty for which is a fine. In Vermont *v.* United States (174 Fed. Rep., 792) this court said, on page 794:

The temptation to make the additional profit which would result by evading the payment of the tax of 10 cents a pound imposed by law upon colored oleomargarine naturally appeals more strongly to the dishonest and irresponsible than to the legitimate dealer; and the former would likely be the class Congress was most solicitous to regulate. It must be admitted that it is possible and well within the power of any and all persons to resort to the business of coloring oleomargarine to make it look like butter; and, in view of this possibility, the words "any person" under consideration were doubtless employed by Congress. They are broad and comprehensive and easily embrace any and all persons whether licensed wholesale or retail dealers or otherwise; and by a familiar rule of construction they should be given full force and effect, to the end that the legislative purpose may be subserved.

The evidence was sufficient to convict all of the defendants.

The Government's witnesses testified that Thomas B. May, one of the plaintiffs in error, had obtained about a month prior to and possessed on November 29, 1910, a special-tax stamp as a retail dealer in colored oleomargarine for the premises 3536 Morgan Street in the city of St. Louis; that the business at these premises was conducted under the name of the Clayton Creamery.

They further testify that they watched these premises for a period of a week before breaking in on the 29th day of November, 1910; that at the time they broke in, they had to break down several doors, and when they finally reached the second story of the premises, they there found three of the plaintiffs in error, to wit, Fred D. May, William M. Johnson, and E. W. Bailey. They found on the premises a gasoline stove, around which were piled a number of tubs of oleomargarine in a soft and oily condition. They found oleomargarine in tubs, stored in an ice box; they found a printing table, such as is usually used in preparing butter or oleomargarine in shaping the same in prints from its original contents in firkins; they found paddles, some galvanized iron tubs, in which colored oleomargarine was found sticking to the sides. They also found, under a trapdoor in the floor, a lot of oleomargarine streaked with coloring matter, and under this same trapdoor they also found an empty can which bore a label upon which was the inscription: "Butter Color, Heller & Merz Co., Aldernay Butter Color, New York, N. Y.," and also another empty can of the same character thrown on top of the ice box.

The testimony of these witnesses further shows that plaintiff in error, Tom May, the proprietor, had been seen around said premises at various times for a considerable period, and had been there on every day during the week immediately preceding the raid, but was not, and had not been there on the morning of the raid; that plaintiff in error, Fred D. May, usually arrived at said premises about 6 or 6.15 in the morning; that he had been around there every day during the week immediately preceding the raid, and had also been around there frequently for a period of about two years immediately preceding said time. That plaintiff in error, Johnson, was observed there three different times during the week immediately preceding the breaking in; that he arrived about 7.15 in the morning and would leave about 10.30 or 11 the same morning, and that he had been observed around there on other occasions prior to this time. That Bailey was around there every morning during the week immediately preceding the breaking in, and also during a considerable period preceding this time; that he had been observed taking care of the horses and wagons that were kept on the premises.

It required from 20 to 25 minutes to break into the room upstairs. The demand for admission before breaking in was made in so loud a voice that it attracted the attention of the neighbors in the house next door. While the officers were attempting to force

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an entrance the defendants who were inside the building neither said nor did anything. During the time that the officers were watching the premises they observed a number of drivers come in the early morning and depart in wagons loaded with goods.

The facts above stated, with other evidence to which attention has not been called, were sufficient to convict all of the defendants both of the offense of engaging in the manufacture of oleomargarine without paying the tax of $600, and also of the offense punished by section 17.

It seems to be the claim of the defendants that they can not be convicted unless some witness saw each defendant in the act of mixing coloring matter with white oleomargarine. Such proof was not required. The evidence shows that this unlawful business of coloring oleomargarine was being carried on at this place with intent to sell the product and to defraud the Government, and that each one of the defendants knowingly assisted therein. Vermont *v.* United States (174 Fed. Rep., 792, 795).

The judgment of the court below is affirmed.

August 19, 1912.

SANBORN, Circuit Judge, delivered a dissenting opinion.

(T. D. 1798.)

Oleomargarine—Court decision.

1. INDICTMENT.

Essentials of an indictment under section 17 of the oleomargarine act. A bill of particulars may be applied for to ascertain facts omitted from indictment so that defendants may be advised of nature and cause of accusation against them.

2. SEARCH WARRANT.

Evidence obtained from letters and papers found upon the premises. No violation of constitutional rights.

3. CONVICTION.

Judgment affirmed upon first count of indictment and reversed on second count; the two counts constituting but one offense.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1912.

The appended decision of the United States Circuit Court of Appeals, Eighth Circuit, in the case of Joseph G. May, W. L. Thompson, and Herbert Taylor, plaintiffs in error, *v.* United States, defendant in error, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT. No. 3756. MAY TERM, 1912.

Joseph G. May, W. L. Thompson, and Herbert Taylor, plaintiffs in error, v. *United States, defendant in error.*

IN ERROR to the District Court of the United States for the Western District of Missouri.

Before SANBORN and HOOK, Circuit Judges, and WILLARD, District Judge.

WILLARD, *District Judge,* delivered the opinion of the court.

The plaintiffs in error, Thompson, Taylor, and Joseph G. May, were convicted in the court below of a violation of section 17 of the oleomargarine act. The case made

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by the evidence was like this: Several persons under the name of the Clayton Creamery were, during the summer and fall of 1910, engaged in business at 809 West Twelfth Street, Kansas City, Mo. One of their number had a license to do business as a retail dealer in oleomargarine. They employed persons to travel over certain routes soliciting purchases of oleomargarine. Drivers were also employed to travel over these routes delivering the goods sold by the solicitors. They commenced with one delivery wagon in April and by October the business had grown to such an extent that five delivery wagons were required. Each one of the persons engaged in that work delivered between 700 and 1,200 pounds a week.

The oleomargarine thus delivered was, according to the testimony of the delivery men and the purchasers, colored so that it looked like butter. They never paid the tax of 10 cents a pound upon this product. That they intended to evade the payment of the tax is apparent from the price which they paid for white oleomargarine and the price at which they sold the colored article, which was 25 cents a pound. For the former they paid between 13½ cents and 18 cents a pound; when colored so as to look like butter it was subject to an additional tax of 9¾ cents. They paid their solicitors at the rate of about $1.35 a day and 2 cents a pound. They paid the delivery men as high as $15 a week and 2 cents a pound on all in excess of 750 pounds a week. That the white oleomargarine was manufactured into colored oleomargarine upon their premises is indicated by the fact that they bought large quantities of the white product and very small quantities of the colored product. Between June 21, 1910, and October 29, 1910, they bought of Swift & Co. 57,840 pounds of the white oleomargarine; they bought white oleomargarine also from Morris & Co. and from W. J. Moxley.

The place where the business was carried on had been for some time prior to October 29, 1910, watched by the Government revenue officials. On that day these officials, accompanied by city policemen, entered the place, and in the front room of the building they found Stowers, who is not one of the plaintiffs in error, sitting at a desk. They demanded admission to the rear part of the building, which was refused, and the door was broken open with an iron bar and a jimmy. On the inside of this door were two stirrups, so that two 2 by 4's could be dropped in them. In the room thus entered was found a large ice box about 6 feet square, running almost to the ceiling, with walls 6 inches thick. There were arrangements for locking the door of this ice box on the inside, but no arrangements for locking it on the outside. The defendant, Taylor, was found in this ice box mixing coloring matter and white oleomargarine. The defendant, Thompson, was standing near by washing his hands and arms. Six tubs of yellow oleomargarine were found in the ice box and pure white oleomargarine thrown upon the floor. A glass smeared with coloring matter and a can of coloring matter were found in the building, also boxes partially filled with yellow oleomargarine in prints, 1-pound packages, also an oil and a gas stove for heating water, and 30 tubs of white oleomargarine. The window on the west side of the building was boarded up tight, and the south windows had curtains extending over the lower part probably halfway up.

The defendant, Joseph G. May, was not found in the building at that time, but the evidence is ample to show that he was engaged with Thompson and Taylor in the enterprise. Swift & Co. sold oleomargarine to him during the time covered by the indictment. Morris & Co. sold him oleomargarine on October 18, 1910. He employed Wilson as a driver; he figured up the accounts of Mrs. Rairdon, a solicitor, and paid her, and he signed a contract with Gardiner as a driver.

The evidence in the case, an outline of which has been given above, was entirely sufficient to convict all of the defendants of a violation of section 17. The questions to be now considered are whether the conviction upon this evidence must be set aside by reason of errors occurring in the proceedings which led up to the sentence.

* * * * * * *

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After making these objections to the indictment, all of which were overruled, the defendants demurred to the first count. That count is as follows:

On or about the 1st day of July, 1910, and on each and every day thereafter during the months of July, August, September, and up to and including the 29th day of October, A. D. 1910, at Kansas City, Jackson County, Mo., in said division and district, and within the jurisdiction of this court, Joseph G. May, William C. Stowers, Herbert Taylor, Fred May, and W. L. Thompson, whose Christian name is to the grand jurors unknown, were engaged in and carrying on the business of manufacturing oleomargarine at said Kansas City, Mo., and did then and there unlawfully and feloniously defraud, and attempt to defraud, the United States of America of the tax provided by law, and required to be paid on the oleomargarine produced by them, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

This count is based upon section 17 of the act of August 2, 1886 (24 Stat., 209), which is as follows:

That whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars and be imprisoned not less than six months nor more than three years.

It is said that this count is bad for duplicity, as two felonies are charged, one, the act of defrauding, and the other, the attempt to defraud, both under section 17. This contention is answered by the case of Crain *v.* United States (162 U. S., 625).

An indictment charging a violation of this same section has been sustained by this court in the case of Fred D. May et al. *v.* United States, just decided. That indictment differs from this one, in that the former states the street number of the factory, where the business was carried on, the name under which the defendants were doing business, and the number of pounds of oleomargarine produced without payment of the tax of which the defendants attempted to defraud the United States. No allegations of a similar character appear in this indictment, but no one of these facts there stated was an essential element of the offense. The Supreme Court said in the case of Ledbetter *v.* United States (170 U. S., 606, at p. 611):

The cases wherein it is held that an indictment in the exact language of the statute is not sufficient are those wherein the statute does not contain all the elements of the offense, as in United States *v.* Carll (105 U. S., 611), where a statute against passing counterfeit money failed to aver the scienter; but where the statute sets forth every ingredient of the offense an indictment in its very words is sufficient, though that offense be more fully defined in some other section.

The decision in the case of Fred D. May is authority for saying that this count contained every element of the offense. The most that can be claimed by the defendants is that it was not so full as it might have been in giving the details of the offense. Is this such a defect in the indictment as requires a reversal of this judgment? In the case of Clement *v.* United States (149 Fed. Rep. 305), this court said, at page 313:

We must, so far as possible, consistently with insuring an accused person a fair and impartial trial, guaranteed to him by the Constitution and laws, disregard form, imperfection of statement, and unimportant defects, which do not reasonably tend to the prejudice of the accused. This we are commanded to do by positive law (Sec. 1025, Rev. Stat. [U. S. Comp. St. 1901, p. 702]) as well as by repeated admonitions of the Supreme Court.

In the case of Brown *v.* United States (143 Fed. Rep., 60), this court said, at page 62:

But it is to be borne in mind that what is required is reasonable, not absolute or impracticable, particularity of statement; else the rules of criminal pleading will be deflected from their true purpose, which is to secure the conviction of the guilty, as well as to shield the innocent. Evans *v.* United States (153 U. S. 584, 590, 14 Sup. Ct. 934, 38 L. Ed. 830; Cochran *v.* United States, 157 U. S. 286, 290, 15 Sup. Ct. 628, 39 L. Ed. 704; Durland *v.* United States, 161 U. S. 306, 314, 315, 16 Sup. Ct. 508, 40

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L. Ed. 709. It is also to be borne in mind that a defect in matter of substance is fatal, while a defect in matter of form only—and this includes the manner of stating a fact—which does not tend to the prejudice of the accused, is immaterial. Rev. Stat. 1025 (U. S. Comp. St. 1901, p. 720).

A bill of particulars can not make an indictment valid which fails to state an essential element of the offense, when objection is made at the proper time and in the proper manner But, in Morris *v.* United States (161 Fed. Rep., 672), the court said, on page 681:

So it might well be said by a defendant charged in general terms with carrying on the business of a manufacturer that it does not reasonably advise him in advance as to which of said statutes it was the prupose of the prosecutor to invoke. This question could not be raised in advance by demurrer, as the indictment on its face would be good under section 4 of the original statute. The clear course for the defendant in such situation to pursue, for his proper protection against unpreparedness and surprise, is by timely motion to compel the prosecutor to furnish him with a bill of particulars. This was aptly and comprehensively expressed by Judge Van Devanter in Rinker *v.* United States (151 Fed. Rep., 759; 81 C. C. A., 383) as follows:

"When an indictment sets forth the facts constituting the essential elements of the offense with such certainty that it can not be pronounced ill upon motion to quash or demurrer, and yet is couched in such language that the accused is liable to be surprised by the production of evidence for which he is unprepared, he should in advance of the trial apply for a bill of the particulars; otherwise, it may properly be assumed as against him that he is fully informed of the process of the case which he must meet upon the trial."

Such was the course pursued by the defendants in this case. They demanded a bill of particulars under the first count, and this was furnished by the district attorney under the order of the court. The facts set out in the bill of particulars stated all of the details which were omitted in the indictment. There can be no doubt but that the defendants went to trial fully advised of the nature and cause of the accusation against them, and were in no way prejudiced by the want of particularity in the statement in the indictment of the details of the offense. In Connors *v.* United States (158 U. S., 408) the court said, on page 411:

Nor, if made by demurrer or by motion and overruled, would it avail on error unless it appeared that the substantial rights of the accused were prejudiced by the refusal of the court to require a more restricted or specific statement of the particular mode in which the offense charged was committed. (Rev. Stat., sec. 1025.) There is no ground whatever to suppose that the accused was taken by surprise in the progress of the trial, or that he was in doubt as to what was the precise offense with which he was charged.

In Armour Packing Company *v.* United States (209 U. S., 56) the court said, on page 84:

In the present case no objection was made to the indictment until after verdict by motion in arrest of judgment.

Had it been made by demurrer or motion and overruled it would not avail the defendant in error proceedings, unless it appeared that the substantial rights of the accused were prejudiced by the refusal to require a more specific statement of the particular mode in which the offense charged was committed. (See Rev. Stat. U. S., sec. 125; Connors *v.* United States, 158 U. S., 408, 411.)

The court refused to submit to the jury a regulation of the internal revenue department, which, as the defendant claimed, gives a person engaged in the oleomargarine business the whole of the calendar month in which to make payment. When most favorably construed for the defendants, all that can be claimed for this regulation is that it gives to a manufacturer or a wholesale or retail dealer who commences his business on any day of the month the whole of that month within which to pay the yearly license, although we do not say that this would be the right construction. The tax of 10 cents a pound upon colored oleomargarine is paid by stamps. There

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is nothing in this regulation to indicate that the seller of colored oleomargarine has until the end of the month in which to pay this stamp tax on oleomargarine which he has already removed or sold. This count in the indictment is based upon section 17, which does not relate to such license taxes. The regulation therefore had nothing to do with the case.

The defendants' eighth request was in effect given by the court when it said to the jury that section 17 provided that oleomargarine so produced by coloration, when removed for consumption or sale, would be subject to the tax of 10 cents a pound.

We find nothing in the charge to support the claim of the defendants that the judge gave the jury to understand that if they found that any wrongful and criminal acts were being done when the arrests were made, that they might infer therefrom that like acts had been done before.

When the officers went to the place of business of the defendants on October 29, 1910, they had a search warrant. They seized various articles which they found upon the premises, and also some letters and other papers. Two promissory notes signed by the defendant, May, thus found were introduced in evidence to show his connection with the business. It is claimed by him that his constitutional right to be free from unfawful searches and seizures was violated, and that he was compelled in this way to give evidence against himself. There is nothing in this claim. Adams *v.* New York (192 U. S., 585); Ripper *v.* United States (178 Fed. Rep., 24.) The conviction upon the first count must be sustained.

The defendants were tried and convicted upon another count. This charges a violation of the same section 17, and the same evidence and the same acts were relied upon to convict the defendants on this count as in the first count. This seems to have been the view taken by the judge below, for he said at the end of his charge:

> I will simply say this to the jury, that the matter is so presented to the court that the two counts really constitute but one offense. That is to say, that whatever may be the form of the verdict of the jury the court will impose but one sentence if the verdict be guilty. But that need not affect your deliberation as to whether you believe there is guilt or innocence on each of the counts.

Under these circumstances, the conviction under the second count can not be sustained.

The judgment of the court below is affirmed upon the first count of the indictment, and reversed upon the second.

August 19, 1912.

(T. D. 1799.)

Special tax.

Liability for special tax on account of ordering liquors from wholesalers to be shipped to the customer but charged to person ordering, depends on general law of sales.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 11, 1912.

SIR: This office is in receipt of your letter of the 7th instant, relative to the alleged liability of ——— ——— to special tax as wholesale dealer in malt liquors for the period from May 1, 1911, to June 30, 1913.

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This liability is based upon orders given by ——— ——— to a brewing company for malt liquors in wholesale quantities, with directions that such liquors be shipped to various customers of ——— ———, but charged to themselves.

Of course, the liability asserted is governed by the general law of sales and depends upon whether or not ——— ——— acquired legal title to the beer and transferred same to other persons for a consideration. Whether or not a profit was made upon such sales is not material, the only question being as to whether the brewing company sold the malt liquors to ——— ——— and they sold them to the consumers. It is believed that, upon consideration of the facts, you will be in a position to advise your client as to whether or not he has incurred liability.

No assessment has yet been made in the case, and therefore it is not necessary as yet to file a formal claim on Form 46 or 47 for the abatement or refund of the tax, but your client may, if he so desires, submit complete evidence as to the transactions in the shape of affidavits, etc., for the consideration of this office in determining whether or not assessment shall be made.

Respectfully,

ROYAL E. CABELL.
Commissioner.

Mr. ——— ———.

(T. D. 1800.)

Transfer of special-tax stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1912.

Paragraph 3 of Regulations No. 1, Supplement No. 1 (T. D. 1637), governing the transfer of special-tax stamps upon removal of business from one place to another, in the same or in another collection district, is hereby amended so as to read as follows:

Whenever a special taxpayer desires to remove his business to a place other than that specified in his original return on Form 11, and stated in his special-tax stamp, he shall, *during the calendar month in which such transfer is made*, register such fact by filing, under oath, an additional Form 11, properly modified, setting forth the time and place where he intends to engage in the business described; and if such taxpayer is a firm or corporation, the names and residences of all the members or principal officers thereof shall again be recorded.

Unless such transfer notice is filed within the time above specified, a new special-tax liability will be incurred, and a new special-tax stamp will be required for the business so carried on.

The amendment here made to the present existing regulations, as indicated by italics, will take effect on and after November 1, 1912.

ROYAL E. CABELL, *Commissioner*

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(T. D. 1801.)

Rectifiers.

Instructions as to use of 27B packages and original packages on premises of rectifiers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 17, 1912.

SIR: In reply to your letter of the 11th inst., relative to six packages of spirits found at the rectifying establishment of ——— & Co. without stamps, marks, and brands, you are advised that a rectifier is at liberty to designate containers as belonging to the permanent equipment of his establishment, and to register the same on his notice, Form 27B, at the same time marking the package "27B," followed by a serial number in plain legible characters not less than three inches long in oil colors (Regulations No. 7, p. 97). These containers may vary in size from a small barrel or cask up to a large tank or vat capable of containing 1,000 gallons or more.

None of the containers so registered and marked can be used for containing the product of rectification for shipment, sale, or delivery, but must remain on the premises as a part of the permanent apparatus pertaining thereto and must contain no spirits except such as are in process of rectification. Chalk marks on the side are of course wholly inadequate for the identification of containers thus registered and utilized.

The law (sec. 3317a) expressly recognizes the right of a rectifier to rectify or compound in the original package, so that part of the stock in process of rectification may not be found in vessels marked "27B," but rather in merchantable packages with the remnant of a stamp on the head, but with the central portion cut out and sent to the collector's office accompanying Form 122 when the package was gauged for (constructive) dumping.

Packages filled with the product of rectification and awaiting the services of a gauger might be legitimately on the premises, uncovered by a stamp, but as to such there would be an application pending on Form 237. This latter is the only case which would justify the existence on the premises of a rectifier of packages containing distilled spirits wholly unprotected by stamps or portions of a stamp.

The only theory on which the existence of the six packages in question can be justified is the latter one, but in that case it would be necessary for the rectifiers to show that applications for stamps for rectified spirits on Form 237 were pending to cover these six packages in exactly the condition as to contents, etc., in which actually found.

* * * * * * *

Respectfully,

ROBT. WILLIAMS, JR., *Acting Commissioner.*

COLLECTOR OF INTERNAL REVENUE, *Cincinnati, Ohio.*

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(T. D. 1802.)

Legacy taxes.

Time for filing claims for refund extended to January 1, 1914.—Act of July 27, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 20, 1912.

The appended act of Congress, entitled "An act extending the time for the repayment of certain war-revenue taxes erroneously collected," is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

[PUBLIC No. 244.—H. R. 24699.]

AN ACT Extending the time for the repayment of certain war-revenue taxes erroneously collected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of section twenty-nine of the Act of Congress approved June thirteenth, eighteen hundred and ninety-eight, known as the war-revenue tax, or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter.

SEC. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of any moneys of the United States not otherwise appropriated, to such claimants as have presented or shall hereafter so present their claims, and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provisions of the Act aforesaid.

Approved, July 27, 1912.

(T. D. 1803.)

Taxes covered by real estate bid in for the United States.

Credit to be taken after the period for redemption has expired and the deed for the land to the United States is on file in this office.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 24, 1912.

To collectors of internal revenue:

By reason of the requirements of the Auditor for the Treasury Department, hereafter collectors will not take credit in their accounts for taxes covered by real estate bid in for the United States until the period for redemption has expired, a good and sufficient deed of the land to the United States has been duly executed, approved,

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recorded, and transmitted to this office, and this office has authorized the credit, as provided in Regulations No. 2, page 37.

That portion of T. D. 1654, dated September 16, 1910, conflicting with the above instructions, is hereby revoked.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

(T. D. 1804.)

Instructions relative to preparation of vouchers, schedules, and accounts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 24, 1912.

To collectors, internal-revenue agents, and inspectors:

Prior to transmitting vouchers to this office covering traveling expenses, care should be taken to see that the following instructions are observed, so as to avoid returning vouchers for correction, which delays the adjustment of the account:

1. Miles traveled by railroad should be shown in column headed "By R. R." Miles traveled by bus, livery, stage, steamer, street car, or other means of transportation should be entered in column headed "Other than R. R." Where distance traveled each day by street car is not definitely known, the estimated number of miles should be given.

2. Entries of expense must be made in columns indicated on the forms without interlineation of columns. Charges for toll, stage, ferriage fares, porterage, and steamer fares should be entered in column headed "Miscellaneous." Charges for feed of livery should be entered in column headed "Livery."

3. Revenue agents and inspectors may report on their accounts in one item the charge for subsistence for the month, showing period covered in detail part of account and extending as one entry in column headed "Subsistence" the amount claimed.

4. Vouchers of all officers should be rendered in accordance with instructions on forms; the hour of arrival at, and the departure from, all towns visited should be shown thereon; the names of persons from whom meals and lodgings are procured should be stated, except by officers who have a per diem allowance in lieu of subsistence, even if the amount paid is not in excess of $1.

5. Schedule of vouchers should be made in accordance with instructions thereon, care being taken to see that the footing of each column is correctly made. Headings of columns should not be changed by interlineations. Schedules reporting expenses incurred in a given month should be made for the month following, i. e., the month in

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which payment is made. Column headed "Total paid from appropriations" should show total expenditures for the month for which the schedule is rendered.

6. Vouchers for a given month with schedules are required to be forwarded to this office not later than the 10th of the following month.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

(T. D. 1805.)

List of alcoholic medicinal preparations amended.

Removing the names of Tamerina and Ferro-China Fratantuono from T. D. 1794, revised list of alcoholic medicinal preparations for the sale of which special tax is required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 2, 1912.

To collectors of internal revenue, revenue agents, and others:

Tamerina, manufactured by the Ellis-Lillybeck Drug Co., Memphis, Tenn., and Ferro-China Fratantuono, manufactured by Joseph Fratantuono, Providence, R. I., were listed through error in T. D. 1794, revised list of alcoholic medicinal preparations for the sale of which special tax is required.

The above two preparations, as now prepared, have been classed by this office as bona fide medicinal preparations for the sale of which, solely in good faith for medicinal use only, special tax is not incurred.

ROBT. WILLIAMS, JR., *Acting Commssioner.*

(T. D. 1806.)

Special excise tax on corporations—Ruling relative to returns.

All corporations not specifically enumerated in the act as exempt are presumed to be "subject to the tax" and required to make returns.—When a statement may be filed in lieu of a return.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 9, 1912.

SIR. In further reply to your letter of the 26th ult., relative to the case of ——— ———, I have the honor to state that before the corporation can be excused and its name removed from the delinquent list it should show by affidavit that it is not organized for profit; that it has or had no capital stock represented by shares; and that it is or was not carrying on or doing business within the meaning of the law.

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Primarily every corporation not specifically enumerated in the act as exempt from its requirements is presumed to be "subject to the tax," and is therefore required to make a return of net income on or before March 1 next succeeding each calendar year. A corporation presumably liable under the law can not of its own motion hold itself to be exempt and thus escape the necessity of making a return. If by reason of the fact that it is not organized for profit, has no capital stock represented by shares, and is not carrying on or doing business, it believes itself not to be subject to the tax or required to make a return, it should, prior to the date when returns are due, satisfy either the collector or this office that it does not come within the terms of the act. In other words, it is incumbent upon every corporation, not specifically enumerated as exempt, to file its return within the prescribed time or, in lieu of a return, to file a statement within that time showing that it is exempt by reason of the character and purpose of its organization, and whether or not it was actually carrying on or doing business for profit during the year for which the return is required. Logically, a corporation is delinquent if it fails to file its return or, in lieu of such return, a statement as above indicated, on or before March 1.

This opinion appears to be supported by the decision of Judge Van Valkenburgh, of the United States District Court for the Western District of Missouri, in the case of United States *v.* Military Construction Co. (T. D. 1774).

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. ——— ———.

(T. D. 1807.)

Alcoholic medicinal preparations.

Removing name of Parker's Beef, Wine, and Iron from T. D. 1794.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1912.

To collectors of internal revenue, revenue agents, and others:

An investigation discloses that "Parker's Beef, Wine, and Iron," manufactured by the Parker-Brown Co., Pittsburgh, Pa., is now manufactured under a formula approved by this office, and therefore the name of this preparation will be removed from T. D. 1794, and special tax should not be required for the sale, for medicinal use only, of this preparation.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1808.)

Cancellation of tobacco, snuff, cigar, and cigarette stamps.

Amending Regulations No. 8, permitting cancellation of tobacco, snuff, cigar, and cigarette stamps by perforation, at the option of the manufacturer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1912.

To collectors of internal revenue:

To accommodate those manufacturers of tobacco, snuff, cigars, and cigarettes who desire to cancel their stamps by perforating their factory number, district and State, and date of cancellation in same, Regulations No. 8, revised July 1, 1910 (pp. 41 and 52), under the head of "Cancellation of tobacco and snuff stamps" and "Cancellation of cigar and cigarette stamps," respectively, are hereby amended, permitting such cancellation at the option of the manufacturer, in the following manner:

The numerals of the factory number alone will be sufficient, without further qualification, while the name of the State may be suitably abbreviated or its initial letters given, and the date when canceled may be indicated by numerals, if preferred, signifying the number of the month of the calendar, the day of the month, and the last two figures of the number of the current year. Illustration:

348–1–Mich.
10–26–12

The several figures and letters of the cancellation thus prescribed shall be clearly and sharply outlined and suitably spaced for legibility and distinctness; and in canceling stamps, especially those of small dimensions, the perforation must not be so large as to render it impossible to determine the genuineness, denomination, or rate of tax of stamps so canceled.

The further cancellation of stamps affixed to wooden packages of manufactured tobacco and snuff by sinking a portion of the same into the wood with a steel die will still be required under section 3369 of the Revised Statutes.

ROYAL E. CABELL, *Commissioner.*

Approved:
SHERMAN ALLEN, *Acting Secretary of the Treasury.*

(T. D. 1809.)

Adulterated butter.

The decision of the Circuit Court of Appeals for the Eighth Circuit in the case of the Milton Dairy Co. is not accepted by this office as a precedent. Revenue agents will report to this office all cases where adulterated butter is found to have a moisture content of 16 per cent or more.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1912.

SIR: I have your letter of October 18, calling my attention to the fact that the Circuit Court of Appeals for the Eighth Circuit in the

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case of United States *v.* 11,150 Pounds of Butter, Milton Dairy Co. (195 Fed. Rep., 657) rendered a decision diametrically opposed to the decision rendered in the case of Coopersville Cooperative Creamery Co. *v.* Samuel M. Lemon (163 Fed. Rep., 145) (opinion by Judge Lurton, now Justice of the United States Supreme Court), with respect to the legality of the regulation holding that butter containing 16 per cent or more of moisture is adulterated, and I note your inquiry as to whether or not, inasmuch as your district is located in the eighth circuit, you shall continue to report cases of butter found by you which contains 16 per cent or more of moisture.

You are hereby directed to report all such cases discovered by you. The Milton case does not attempt to declare the law void for any reason, but simply declares that the Treasury Department has no authority under the law to fix by regulation a given amount of moisture as the limit of normal moisture content beyond which the moisture content is abnormal, and the butter, therefore, as a matter of law, adulterated. While the Treasury Department has not accepted the decision in this case as a precedent, it is, of course, unless reversed, binding in the eighth circuit. Even there, however, the decision will have no effect on the administration of the law except possibly to make the administration in this circuit more difficult and a little more drastic in its effect.

Under the decision in this case it appears to be a matter of fact to be determined by a jury as to whether or not any given amount of moisture is sufficient to constitute the butter adulterated under the terms of the statute. This office is of opinion that normal butter should not contain more than 13 per cent of moisture and is confident that there is no trouble to establish by competent evidence in any case that 16 per cent of moisture is abnormal and the butter therefore adulterated. The office also is confident that there is no trouble to establish the fact that the moisture that comes from the milk and is in the butter at the time of churning must necessarily be partially or entirely removed therefrom and the water which remains in the finished product is not the water that was originally in the product but is water that has been adventitiously added. It is also a fact capable of easy proof that the moisture content of butter is subject to the control of the manufacturer. In the future, therefore, this office will continue to assess the civil liability in every case where the moisture content is 16 per cent or over; and, in addition to that, the office proposes to proceed against the manufacturer of butter which contains 16 per cent or more of moisture for his failure to have such butter properly marked, branded, and stamped before it is sold or offered for sale. This will bring up the direct question of fact in each case and, even under the decision of the court in the Milton case—that 16 per cent of moisture is not adulteration as a matter of law—(it being well known that in most cases of adulterated butter

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the moisture content runs up to 18 and 19 per cent), there will be a direct issue of fact to be passed on by a jury, and this office is anxious to have a number of these cases tried before juries in your district and in other districts throughout the country at as early a date as possible.

You will therefore give this matter your careful attention, and all revenue agents are requested to follow this matter as closely as possible all through their districts and report the facts as promptly as possible to this office.

Respectfully, ROYAL E. CABELL, *Commissioner.*

INTERNAL REVENUE AGENT, *St. Louis, Mo.*

(T. D. 1810.)

Adulterated butter—Method of sampling.

Before sampling any suspected adulterated butter, officers should notify the manufacturer, owner, or holder of proposed action, and accord such person or representative the privilege of being present and securing similar samples at the same time, if so desired.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 31, 1912.

To collectors, internal revenue agents, and others concerned:

For the purpose of securing representative samples of suspected adulterated butter, and to avoid complaints of manufacturers, owners, or holders, and requests for resampling, the following instructions are promulgated for the guidance of internal revenue officers and information of others interested:

Hereafter, before sampling any butter, the investigating officer will, where the butter is still on the premises of the manufacturer, notify the manufacturer of such proposed sampling; and, where the butter is on the premises of a person other than the manufacturer, notify the person in whose possession or custody the butter may then be, of such proposed sampling, and that the manufacturer or person in custody of the butter will be granted the privilege of being present in person or by representative for the purpose of witnessing and securing similar samples of the product at the same time and in the same manner in which the Government samples are taken, if they so desire.

The prescribed official method of sampling, except as hereinafter provided, shall be by cutting a V-shaped wedge from opposite sides of the tubs or solids at a point not lower than one-fourth of the depth of the package from the bottom, nor higher than one-half

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such depth from the bottom, these two portions to total not less than one-half pound in weight.

Provided samples shall be taken either by V-shaped wedge from top and bottom, or by trier, where the manufacturer, owner, or holder so requests in writing and waives any claim for damages to the packages so sampled. The above method applies equally to samples to be forwarded to the laboratory of this office, and those for preliminary tests by field officers, except that in the latter case the samples may be of smaller quantity, but not less than one-fourth of a pound in weight.

In case of butter packed in prints, it shall be sampled by taking a 1-pound print from the box or container, and not more than one-fourth of each sample may be used by the officer for preliminary test, the other portion to be put in a container as prescribed by T. D. 1587.

Every original package, whether in solids or prints, shall be sampled as above described for preliminary test, whether or not those interested agree to accept such test as hereinafter provided. Samples should be secured from more than one original unbroken package before reporting liability of manufacturers and wholesale dealers. All samples forwarded to this office must be packed and identified, transmitted as provided in T. D. 1587, and the initials of the officers taking the same should in each case be written in ink on the labels upon the containers.

Where the manufacturer, owner, or holder accepts in writing the preliminary test as conclusive of the character of the product, samples need only be taken from every tenth package and forwarded to this office, but where such agreement is not executed every package shall be sampled, as above described. The acceptance of preliminary test shall be in duplicate, one copy to be forwarded with the report of the investigating officer.

Butter once sampled in the manner above prescribed, and after due notice to those interested who secure duplicate samples or decline to avail themselves of this privilege, will not be resampled, and no application for such action will be entertained. Analysis by the official chemist only will be the conclusive and final basis of action in regard to the butter represented and the liabilities arising therefrom.

Officers are required to observe strictly these instructions as to sampling, and no other method than that prescribed herein shall be employed. All officers and employees engaged in securing samples of butter are admonished to perform these duties with as little delay and friction as possible, leaving the packages sampled as nearly in their original condition as practicable. Any labor required in this work will be performed by the officers, or by persons employed for that purpose, and where requested, officers are authorized to pay for the actual quantity taken and found not to be adulterated, at the

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current wholesale price of the particular grade or brand of the goods, and include this expenditure in their accounts. Duplicate samples taken by the manufacturer, owner, or holder, will be at their own expense.

Any previous rulings or decisions in conflict with these instructions are hereby revoked.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1811.)

Certificates for trade purposes.

Prohibiting the issuance by collectors of certificates to be used for trade purposes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1912.

SIR: The attention of this office has been called to an advertisement appearing in one of the trade journals, in which is printed a facsimile letter addressed by you, as collector, to ——— ———, of ———, under date of September 6, 1912, setting forth that, as shown by the records of your office, "there were bottled at your ——— distillery ——— bottles of seven to eight year old whisky."

As it is contrary to the policy of this office to furnish to taxpayers, or to anyone, letters or certificates (other than tax receipts) that may be used for trade purposes, you are requested to recall the letter in question, and request Messrs. ——— & Co. to omit from their advertisements in future any reference thereto.

The records of this office are for internal-revenue purposes; and this office has uniformly held, and for very obvious reasons, that such records can not properly be disclosed for advertising purposes, especially where they relate to the business carried on by any particular person, firm, or company.

Respectfully, ROYAL E. CABELL, *Commissioner.*

Mr. ——— ———, *Collector of Internal Revenue.*

(T. D. 1812.)

Gauging distilled spirits.

Separate gauge reports not required for each lot of spirits withdrawn by the same distiller on the same day and for the same purpose.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1912.

To collectors of internal revenue and others concerned:

The attention of this office has been called to the practice of certain distillers of filing a separate application for withdrawal and

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regauge for each individual lot of spirits intended to be withdrawn from warehouse on the same day, in order to secure a separate gauge report for each such lot. In some instances as many as 100 separate reports have been thus secured by the distiller for one day's withdrawals.

The furnishing of such separate reports is not required by law or by any regulation, and involves much extra labor on the part of the gauger, and in some instances seriously interferes with the proper performance of his regular official duties. Collectors will, therefore, notify gaugers and storekeeper-gaugers in their respective districts that such separate reports need not be furnished, and that all spirits withdrawn by the same distiller on the same day, for the same purpose—tax payment or otherwise—and covered by the same bond (in case of withdrawal from special or general bonded warehouse), may be included in one gauge report, a copy of which report is to be furnished the distiller as now authorized by regulations.

The foregoing is not intended to prohibit internal-revenue gaugers from making a commercial gauge of distilled spirits, or in furnishing extra copies of their official reports, as provided in the Gaugers' Manual (1906), pages 133–135, where the same "does not in the least interfere with the efficient discharge of their official duties."

Attention, however, is called to the above-named regulations forbidding the use in such cases of blank forms furnished by the department, or the signing by gaugers, in their official capacity, reports of unofficial gauge made by them.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1813.)

Form 166.

Instructions as to reporting cases to United States attorneys for prosecution and as to proper use of Form 166.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1912.

To collectors of internal revenue:

The honorable Attorney General has called the attention of this department to a letter from a United States attorney criticizing the action of certain deputy collectors in swearing out warrants under the internal-revenue laws on "rumor" evidence or evidence of similar kind entirely insufficient for conviction.

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The letter in question refers especially to "bootleggers" and persons engaged in business as liquor dealers without payment of special tax, and, in view of it and other correspondence of a somewhat similar nature, it appears advisable to restate the manner in which such matters should be handled.

No warrant should be sworn out in such cases unless there is definite evidence of liability and the deputy has the affidavits or names of persons who will testify as to purchases of liquor. Where there is doubt as to the evidence no arrest should be made, but the facts should be reported to the United States attorney with such recommendation as to prosecution as the facts warrant. Treasury Decision 1605 is not to be construed as requiring arrest or recommendation of prosecution where there is no, or insufficient, evidence to warrant such action.

FORM 166 SHOULD BE USED IN REPORTING EVERY CASE OF VIOLATION OF THE INTERNAL-REVENUE LAWS TO THE UNITED STATES ATTORNEY. If no prosecution is recommended, the reason for such recommendation should be stated, as, for instance, "evidence not sufficient for conviction." In case prosecution is recommended, the names of witnesses and all facts as to time, place, etc., necessary to enable the United States attorney to draw an indictment should be embodied in the form, supplemental pages being added if necessary. In the event that the case is based upon a report from a revenue agent, the name of the agent and date of the report should appear in the proper space upon the form.

A carbon copy of the Form 166, INCLUDING THE NAME AND ADDRESS OF THE UNITED STATES ATTORNEY TO WHOM THE ORIGINAL IS ADDRESSED, should be furnished this office in every case in which prosecution is recommended. If a recommendation of "no prosecution" is made, copy thereof need not be furnished this office, *except in those cases which are based upon a report from a revenue agent in which he recommends to the collector that proceedings be instituted.* In such cases, and in *any case which has been the subject of correspondence with this office*, a copy of the report to the United States attorney, irrespective of the recommendation made, should be furnished, in order that the case files of this office may be complete and unnecessary correspondence avoided.

This office is establishing a system of handling cases of violation of law under which it hopes to secure a more prompt and perfect following up of such cases and a closer cooperation with field officers and United States attorneys in their prompt disposition. To this end it is essential that collectors, a number of whom have failed in the past to furnish this office with copies of Form 166, should comply strictly with the instructions herein as to furnishing the desired reports.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1814.)

Spirits in warehouse.

Unofficial gauging to be done by United States officers only. Bungs not to be removed and unauthorized persons not to be allowed in the warehouse in the absence of the officer in charge.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1912.

To collectors of internal revenue:

Your special attention is directed to the following points in connection with the making of unofficial inspections of the contents of packages of distilled spirits while in warehouse:

1. The commercial or unofficial gauges of spirits in bonded warehouse must be made by a United States gauger or storekeeper-gauger, and then only after permission has been granted in writing by the collector of the district in which the warehouse is located. The officer's compensation for work of this kind will be as set forth in the sixth paragraph on page 186 of No. 7, revised. In such case the gauger performing the work of the commercial gauge will not sign the return thereof in his official capacity. The only return of gauge which a United States officer is to sign officially is the return of a gauge required by law or regulations. (See in this connection page 186 above referred to.)

2. No bung of any package containing distilled spirits in warehouse shall be removed therefrom except in the actual presence of the officer assigned to the warehouse; nor must the distiller or his employee or any other person except an officer duly authorized be permitted in the warehouse for any purpose whatever in the absence of the officer in charge of the warehouse.

Copies hereof will be furnished to collectors on requisition, who will supply the same to distillers and others concerned, as well as to gaugers, storekeepers, and storekeeper-gaugers in their respective districts.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1815.)

All stationery for the Internal Revenue Service to be furnished on requisition.

Collectors can not be reimbursed for money expended for stationery from their private funds, nor can they receive credit in their accounts for same unless prior authority in writing be given by the Secretary of the Treasury.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 22, 1912.

To collectors of internal revenue:

Especial attention is invited to the following advance decision of the Comptroller of the Treasury which precludes the purchase of

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stationery by collectors of internal revenue and holds that collectors can not be reimbursed for money expended for stationery from their private funds, nor can they receive credit in their accounts for same unless prior authority in writing be given by the Secretary of the Treasury:

By your reference, requesting my decision thereon, I am in receipt of the following letter from the Commissioner of Internal Revenue:

The legislative, executive, and judicial appropriation act approved August 23, 1912, in providing for contingent expenses, Treasury Department, requires that $18,700 be deducted from the appropriation for "Miscellaneous expenses, Internal Revenue Service," and $3,150 from the appropriation for "Expenses of collecting the corporation tax," which, with other items named, is to constitute "the total appropriation for stationery for the Treasury Department and its several bureaus and offices for the fiscal year 1913."

The language of the law appears to make this exclusive, and with that understanding I have the honor to ask that the request of the collector for the district of Georgia, of the 28th instant, be submitted to the Comptroller of the Treasury for an advance decision as to whether the collector can be reimbursed in the amount of $2.25, which he found necessary to expend for stationery, owing to an exigency of the service. The collector's request is inclosed.

In this connection it is deemed proper to state that at times collectors of internal revenue in cases of exigency are compelled to incur expenses for stationery rather than make requisition upon the department, the alternative being an embarrassment to the office which might be productive of a loss to the Government.

The appropriation for "Contingent expenses, Treasury Department, 1913," made by the act of August 23, 1912 (37 Stat., 379), is as follows:

Contingent expenses, Treasury Department: For the following sums, which shall be so apportioned as to prevent deficiencies therein, namely:

For stationery for the Treasury Department and its several bureaus and offices, $50,000, and in addition thereto sums amounting to $86,150 shall be deducted from other appropriations made for the fiscal year nineteen hundred and thirteen, as follows: Contingent expenses, Independent Treasury, $7,200; * * * miscellaneous expenses of collecting internal revenue, $18,700; and for expenses of collecting the corporation tax, $3,150; and said sums so deducted shall be credited to and constitute, together with the first-named sum of $50,000, the total appropriation for stationery for the Treasury Department and its several bureaus and offices for the fiscal year nineteen hundred and thirteen.

As has been suggested by the Commissioner of Internal Revenue, this appropriation is exclusive in that it is specific and is made to "constitute * * * the total appropriation for stationery for the Treasury Department and its several bureaus and offices."

It follows that the claim for reimbursement in question, being payable, if at all, from the department's appropriation for contingent expenses, must be tested by the statutes relating to such contingent expenses.

Section 3683, Revised Statutes, provides:

No part of the contingent fund appropriated to any department, bureau, or office shall be applied to the purchase of any articles except such as the head of the department shall deem necessary and proper to carry on the business of the department, bureau, or office, and shall, by written order, direct to be procured.

By section 321, Revised Statutes, the Commissioner of Internal Revenue, subject to certain requirements not necessary to consider here, was authorized to "receive bids and make contracts for supplying stationery * * *, blank books, and blanks to the collectors in the several collection districts."

The act of March 4, 1911 (36 Stat., 1194), however, provides:

Hereafter the purchase of stationery for the Internal-Revenue Service shall be made under the direction of the Secretary of the Treasury as in the case of other branches of the public service under the Treasury Department.

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It has been uniformly held that payment for articles purchased from an appropriation for contingent expenses without previous written orders therefor is prohibited by section 3683 of the Revised Statutes. Subsequent approval is not a compliance with the statute and does not entitle the officer making the payment to credit for the expenditure. (See 16 Comp. Dec., 798; 18 id., 531; 18 id., 554; 5 id., 166; 4 id., 159; 1 id., 566; 60 MS. Comp. Dec., 1236, Mar. 16, 1912; 52 id., 1420, Mar. 26, 1910; 51 id., 855, Nov. 19, 1909; 41 id., 825, May 18, 1907; 16 Op. Att. Gen., 412, 616.)

No prior authority was given to the collector at Atlanta to expend his private funds for the stationery in question and to have reimbursement made from the department's appropriation for contingent expenses, and I know of no authority of law for making such reimbursement. I have the honor, therefore, to answer the question submitted in the negative.

In arriving at this conclusion I have not overlooked the act of June 25, 1910 (36 Stat., 776), authorizing the Secretary of the Treasury to place the control and expenditure of the various appropriations made for contingent expenses of the Treasury Department *at Washington, District of Columbia*, under such officer or officers of the Treasury Department as he may from time to time deem proper. In this connection attention is invited to Congressional Record, Sixty-first Congress, second session, volume 45, part 8, page 8360.

In order that there may be as little embarrassment as possible in the administration of collectors' offices, they should anticipate, so far as may be, the articles of stationery liable to be needed and make requisition upon the Secretary of the Treasury for same in season to have them in hand when needed.

As this office is without authority in the matter, it would be useless for collectors to request its permission to incur any expense for stationery.

As to what constitutes stationery, in the opinion of this office it includes paper, envelopes, pens, penholders, ink, erasers, pencils, etc., and supplies for typewriting machines, adding machines, mimeographs, etc., and such miscellaneous supplies as may be used in connection with both of the classes above named.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1816.)

Form 49, Abstract of Collections and Deposits.

Form 49, Abstract of Collections and Deposits, to be prepared in triplicate by collectors, the three copies to be mailed to the Commissioner of Internal Revenue.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 23, 1912.

To collectors of internal revenue:

By direction of the Secretary of the Treasury, each collector of internal revenue will, beginning with the current month, prepare abstracts of collections and deposits, Form 49, in triplicate instead

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of in duplicate as at present, and forward the three copies to this office; one for its files, one for the Auditor for the Treasury Department, and one for the Secretary of the Treasury.

Form 49 should be prepared by using carbon paper with but one operation. In the event the form referred to shall have been forwarded in duplicate to this office covering the present month (November, 1912) before this letter shall have been received, an additional form should be prepared at once and mailed to the Commissioner of Internal Revenue.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1817.)

Stills.

Rulings as to manufacture, setting up, and registry of stills.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 27, 1912.

SIR: This office is in receipt of your letter of the 21st instant, quoting a letter received from Mr. —— —— relative to the law, regulations, and instructions regarding the manufacture and setting up of stills of various kinds.

As it appears from this letter that there is confusion as to the requirements of the law and regulations in this respect it seems proper to restate the rulings of this office upon the questions involved.

First. Section 3258, Revised Statutes, provides that every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is. It is held by this office that this provision of law applies to all stills, of whatever size and for whatever purpose intended, with the use of which it is commercially practicable to produce distilled spirits, except small stills of trifling capacity used for domestic or sanitary purposes. This ruling, you will note, however, applies only to stills which are capable of producing distilled spirits, and does not apply to so-called stills, or more properly retorts, used for the destructive distillation of wood and other materials.

Second. Stills of a larger capacity than 5 gallons, so constructed that they can be commercially used for the distillation of spirits, will be presumed to be intended for such use, and their manufacture will be held to incur the taxes imposed by section 3244, Revised Statutes, second paragraph, unless the person for whom such still is made, by evidence under oath submitted to and filed with the collector, removes

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this presumption by showing that the still is not to be used for the production of spirits and setting forth specifically the actual purposes for which it is to be used.

Third. When such evidence is filed the still covered thereby may be removed from the place of manufacture without payment of tax thereon and without the notice and permit provided for in section 3265, Revised Statutes, although, as before stated, when set up for use it must be registered with the collector of the district in which set up, as provided by section 3258, Revised Statutes.

This office is of opinion that it is impracticable to attempt to define what forms of apparatus would fall within the regulations for stills "so constructed that they can be used for the distillation of spirits," as it is easily possible for the manufacturers of such apparatus to determine for themselves whether or not the apparatus is capable of being used commercially for the distillation of taxable spirits.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Mr. JAMES D. GILL,
Collector Third District, Boston, Mass.

(T. D. 1818.)

Concerning bonds for distilled spirits removed for export.

(Supplement No. 1, Regulations No. 29.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 2, 1912.

To collectors of internal revenue and others concerned:

In lieu of the export bond, Form 547, or transportation bond for export, Form 548, prescribed in Regulations No. 29 for each lot of distilled spirits withdrawn for exportation, free of tax, distillers or owners of such spirits may hereafter execute continuing (blanket) bonds under which spirits may be so withdrawn from time to time.

Where the spirits are to be withdrawn for *direct* exportation under the provisions of section 3330, Revised Statutes, the bond will be in the following form:

Form No. —.
Continuing bond.
Sec. 3330, R. S.

Export bond for distilled spirits.

No. ——.

Know all men by these presents, that we, —— ——, as principal, and —— —— and —— ——, as sureties, are held and firmly bound unto the United States of America in the sum of —— dollars, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, at ——, this ——, day of ——, 19—.

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Whereas the above bounded principal intends to remove for export from the United States, without payment of tax, certain distilled spirits now deposited or to be hereafter deposited in [1] ——— warehouse No. —— of ———, located at ——— in the —— collection district of ———.

Now, therefore, the condition of this obligation is such that if the said principal shall as to each lot of distilled spirits so removed as aforesaid, and within 60 days from the date of such removal, safely transport and deliver the said spirits to the collector of customs at the port of export to be named in the entry under which such removal is made, and if the said principal shall export or cause to be exported the said spirits in accordance with the internal-revenue laws and regulations applicable thereto, and shall produce to the collector of internal revenue aforesaid, and within the time and manner required by said law and regulations, proof satisfactory to that office and to the Commissioner of Internal Revenue of the actual clearance of said spirits from the port of entry and of their subsequent landing at the foreign port named in the bill of lading, or at some other port without the jurisdiction of the United States, or that after shipment the said spirits were lost at sea without fault or neglect of the owner or shipper thereof, as required bp law and regulations, then the obligation to be void; otherwise, to be and remain in full force and virtue.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Sealed and delivered in presence of—
——— ———.
——— ———.

If the spirits are to be withdrawn for *transportation* for export, under the act of June 6, 1874, the title of the bond, and conditions named, will be as follows:

Form No. —.
Continuing bond.
Act June 6, 1874.

Transportation bond, distilled spirits for export.

Now, therefore, the conditions of this obligation is such that if the said principal shall as to each lot of distilled spirits so removed as aforesaid, and within 60 days from the date of each such removal, safely transport and deliver the said spirits to the collector of customs at either of the following-named ports, to wit, ———, and shall within 15 days of such delivery produce to the collector of internal revenue of the ——— district of ———, proof, satisfactory to that officer and to the Commissioner of Internal Revenue, that the said spirits have been so delivered and have been duly inspected, entered, bonded, and cleared for a port or place without the jurisdiction of the United States, as required by law and regulations, and shall pay to the said collector of internal revenue the tax on the deficiency, if any, then this obligation to be void; otherwise to remain in full force and virtue.

The bond in either case provided will be executed in duplicate with satisfactory sureties and in a penal sum sufficient to cover double the estimated amount of tax which will at any one time constitute a charge against the bond, and in no case less than $1,000. An account will be kept with each bond given, and collectors will in no instance permit the removal of spirits for export when the penal sum of the bond is insufficient to cover double the amount of tax thereon, including all outstanding charges.

[1] Distillery, general or special bonded, as the case may be.

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Where, however, the bond is found to be insufficient, a new or additional bond with approved sureties may be accepted, and in such cases the duplicate of such new bond will be forwarded to the Commissioner of Internal Revenue, as in the case of an original bond.

Clearance and landing certificate or proof of loss at sea when received will be forwarded by collectors with their bonded account, on which final credit is taken for the spirits so removed for export. Such certificates, etc., should, however, be indorsed with reference to the particular bond filed, and any payment of tax on account of deficiency should also be noted on the papers so forwarded.

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

(T. D. 1819.)

Inserts in statutory packages of tobacco, snuff, cigars, and cigarettes.

The packing of inserts of no redemption value but of different cost to the manufacturer in statutory packages of tobacco, snuff, cigars, and cigarettes of the same size and brand held to be a violation of section 3394, Revised Statutes, as amended, relating to a lottery.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 3, 1912.

To collectors of internal revenue:

On and after January 1, 1913, inserts of no redemption value packed in statutory packages of tobacco, snuff, cigars, and cigarettes of the same size and of the same brand shall be of equal cost to the manufacturer. Such slight changes in design and appearance as are consequent upon the use of a series of flags, birds, baseball players, etc., are not prohibited provided the cost to the manufacturer of the inserts used is the same.

Where a manufacturer packs inserts in statutory packages some of which cost the manufacturer more or less than other inserts used in the same sized statutory package of the same brand, such action constitutes a clear violation of section 3394 of the Revised Statutes as amended, the character of insert distributed to or received by the purchaser in such case depending upon the event of a lottery.

Where inserts or coupons possessing redemption value are used the equality or inequality of such redemption value determines whether or not the statute referred to has been violated; in the use of inserts of no redemption value the equality or inequality of the cost to the manufacturer is the determining factor.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1820.)

Alcoholic medicinal preparations.

Removing the name of Glycerine Tonic manufactured by G. C. Kimmerer from T. D. 1794.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 4, 1912.

To collectors of internal revenue, revenue agents, and others:

This office has reconsidered the classification of "Glycerine Tonic," manufactured by G. C. Kimmerer, of Canajoharie, N. Y., and classed this compound as an alcoholic medicinal preparation for the manufacture and sale thereof solely in good faith for medicinal use only, special tax should not be required. Therefore the name of this preparation is accordingly removed from T. D. 1794.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1821.)

Oleomargarine.

Modification of Regulations No. 9, permitting the lithographing or printing of the word "Oleomargarine" on two surfaces or panels of wrappers or cartons and the trade-mark or brand on another surface.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 7, 1912.

SIR: This office has received your letter of the 2d instant, submitting sketch of proposed carton for packing oleomargarine under the name of "Queen" brand.

The sketch shows the word "Queen" inclosed in a leaf design on one surface or panel, the word "Oleomargarine" inclosed in a leaf scroll on two surfaces, while the fourth surface has thereon a wreath representation with blank space in the center for inspection legend, factory number, district, and State.

There is also submitted a specimen transparent glacine wrapper bearing the words "Queen" and "Oleomargarine" in a leaf scroll, to be used as an additional wrapper or covering around the carton, the ends of which are closed by adhesive seals.

Careful consideration has been given your statements and reasons why the regulations should be modified, which now require that the word "Oleomargarine" shall appear on the same surface of the carton or wrapper with the device, trade-mark, or brand.

It is the opinion of this office that the imprinting of the word "Oleomargarine" on two surfaces of the carton in letters of the same

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size and shading as those in the word "Queen" meets the intent of the law and regulations. Therefore, Regulations No. 9, revised July, 1907, page 38, paragraph 4, subdivisions I and II, and page 39, paragraph 2, subdivision V, as modified by T. D. 1315 and T. D. 1323, are hereby further modified as follows:

The word "Oleomargarine" may be imprinted or lithographed on two surfaces or panels of a wrapper or carton, and the trade-mark or brand on another surface, provided the letters in the word "Oleomargarine" are of the same size and shading and equally displayed with those in the trade-mark or brand.

And provided further, that any additional transparent glacine paper for encasing such wrappers or cartons shall have the brand and the word "Oleomargarine" printed or lithographed on the same surface in letters of the size and character prescribed by the regulations as modified by T. D. 1315.

Respectfully,

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH, *Secretary of the Treasury.*

(T. D. 1822.)

Per diem of United States internal-revenue gaugers.

No authority can be given to pay regular gaugers a flat rate per diem nor can they be granted a special rate of fees based on quantity gauged except when they are employed a considerable portion of their time in traveling.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1912.

To collectors of internal revenue:

Attention is called to the fact that as required by law regular gaugers are entitled only to such fees to be determined by the quantity gauged as may be prescribed by the Commissioner of Internal Revenue. The exception to this requirement is found in section 3157*c*, Internal Revenue Compilation, which specifically excepts gaugers employed in gauging fruit brandy and gaugers specially detailed to special duty under the direction of the Commissioner (the latter class being designated as special gaugers).

This office can not authorize a flat per diem rate to be paid a regular gauger, nor can he receive a flat rate of fees under the law. By flat rate is meant a specified amount, such as $3.50 or $4 or any other stated amount. Regulations No. 2, page 89, paragraph 5, provide that where a gauger is necessarily employed a considerable portion of his time in traveling while in the performance of his duties and whose fees at the rate prescribed are thus, in the judgment of the collector, inadequate to compensate him for the service performed, may be granted by the Commissioner a special rate of fees (meaning a rate higher than that provided by the regulations based on the

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quantity gauged) upon a full statement by the collector of all the facts in each case.

Under the law gaugers, storekeeper-gaugers, and storekeepers receive a minimum daily compensation of $3 when actually employed, and if their assignments are of such a nature that they can not earn a greater compensation on account of insufficient work the administrative office certainly has no authority to authorize a special rate for the sole purpose of increasing the compensation. If that could be done there would have been no necessity for legal enactment to correct the matter. If gaugers regularly assigned do not come within that class mentioned in the regulations quoted in part above, but earn at the established and fixed rate a daily compensation not in excess of $3, it may be that their assignments would be considered undesirable, but for that reason alone their compensation could not be increased.

The purpose of this decision is to put a stop to the practice of certain collectors of paying certain gaugers fees in excess of those provided by the regulations and attaching to the officer's accounts, after the same have been paid, recommendations trusting to this office to ratify their action. Even if such a procedure were authorized by law it would remove from the head of this office one of the checks necessary in order to keep in close touch with the administration of the service, as he would then not have an opportunity to pass upon each case, as it is a physical impossibility for him personally to examine the many accounts of the officers in this service. On the contrary, where authority is required in advance of payment a copy of such letter of authority authorizing a special rate of fees based on the quantity gauged is required to be filed with each account forwarded.

Attention is also called to the fact that the only transportation expenses of gaugers, storekeeper-gaugers, and storekeepers in going from residence to place of assignment and returning therefrom which are payable by the Government are those covering initial or first journeys and final ones when relieved from assignments. The Comptroller of the Treasury has repeatedly held that expenses incurred by officers in traveling from residence to office or where their duties require them to be can not be paid by the Government. This requirement should be fully understood, and there can be no departure therefrom.

Every collector is expected to familiarize himself with the provisions of this letter and issue such instructions to his subordinates as will insure a thorough understanding of the requirements without the necessity of correspondence in individual cases.

Strict compliance with the requirements of this letter will be exacted.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1823.)

Extraction of soakage from wood of empty spirit packages.

Provisions of sections 3317, 3317a, 3318, Revised Statutes, as to procedure and evidence to be submitted to collectors of internal revenue before issuing rectified spirit stamps, mandatory. No authority in collectors of internal revenue or Commissioner of Internal Revenue to waive such provisions.—Consent judgment in case of Philadelphia Extracting Co. *v.* McCoach.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 31, 1912.

To collectors of internal revenue, revenue agents, and others concerned:

Several inquiries have been received at this office asking what effect, if any, the decision of the United States Court for the Eastern District of Pennsylvania in the case of the Philadelphia Extracting Co. *v.* McCoach would have on the status of persons who have paid or who may pay special tax as rectifiers and who desire to engage in the business of extracting from the wood of empty spirit packages any distilled spirits that may remain absorbed therein.

After careful consideration of the facts in the case, by the office of the United States district attorney for the eastern district of Pennsylvania and this office, it was concluded that, in all probability, an assessment in this case was an improper method of procedure and that in rem proceedings should have been instituted instead. It was also clearly developed that the only question that could be decided in this case was a technical one of no very great moment and that in no way could a decision have been secured on the material points sometime since at issue between this office and several rectifiers, who were then engaged in the practice of extracting from the wood of empty spirit packages the distilled spirits remaining absorbed therein, these points relating principally to the matter of allowance of tare at a distillery warehouse, and whether or not a collector of internal revenue is authorized to waive the provisions of sections 3317, 3317*a*, and 3318, Revised Statutes (pp. 210, 211, and 212, Internal Revenue Laws, Revision of 1911), with respect to the procedure and the evidence that should be furnished him before rectified spirit stamps are issued. It was determined, after considering all of these matters, not to contest the suit instituted against the collector by the Philadelphia Extracting Co., and judgment was accordingly entered for the plaintiff.

As is well known, a rectified spirit stamp is a mere certificate of the prior tax payment of the spirits in the package covered by such stamp. The provisions of sections 3317, 3317*a*, and 3318, Revised Statutes, are absolutely mandatory with respect to the procedure to be followed by any person desiring to secure such stamps and the

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evidence to be submitted to a collector of internal revenue before he is authorized to issue certificates of prior tax payment in the shape of rectified spirit stamps. No collector of internal revenue and no administrative officer is authorized to waive or modify any material requirement of these statutes, and any rectifier who shall violate the provisions of these sections, or of any other mandatory statute relating to his business, whether the violation occurs in connection with the attempted recovery of distilled spirits from the wood of empty spirit packages, or otherwise, should be promptly reported to this office, and proceedings will follow in accordance with the laws bearing on this subject.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1824.)

Suit on distiller's bond—Decision of court.

1. LIABILITY ON BOND.

The annual distiller's bond is liable for the tax on spirits distilled and not paid by the distiller.

2. ASSESSMENT PRIMA FACIA EVIDENCE.

The assessment is prima facie evidence of the amount due.—This rule applies both in respect to the distiller and the surety on the bond.

3. AFFIRMANCE OF JUDGMENT.

Although the instructions of the court took away from the assessment the presumption in its favor, there was no prejudicial error, and the judgment of the United States District Court in favor of the Government was affirmed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 26, 1912.

The appended decision of the United States Circuit Court of Appeals, Second Circuit, in the case of United States Fidelity & Guaranty Co. *v.* United States, is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

United States Fidelity & Guaranty Co., plaintiff in error, v. *United States, defendant in error.*

Before LACOMBE, WARD, and NOYES, Circuit Judges.

Writ of error to review a judgment of the District Court, District of Connecticut, in an action brought by the United States against the plaintiff in error, hereinafter called the defendant, as surety upon two distiller's bonds, the relevant portions of which read as follows:

"Now, therefore, if Esadore Gladstone shall in all respects faithfully comply with all the provisions of law and regulations in relation to the duties and business of distillers of brandy from apples, peaches, grapes, pears, pineapples, oranges, apricots,

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berries, prunes, figs, or cherries, exclusively, and shall pay all penalties incurred or fines imposed on * * * for a violation of any of the said provisions, then this obligation shall be void; otherwise, it shall remain in full force."

The complaint alleged that the defendant executed the bonds as surety for one Gladstone; that said Gladstone engaged in the business of distilling brandy, and that he failed to comply with the provisions of law governing said business in that he did not pay the taxes upon certain brandy produced by him during the periods covered by the bonds.

Upon the trial the Government offered in evidence in support of the allegations of its complaint the assessment made by the Commissioner of Internal Revenue based upon an estimate of the amount of brandy distilled by Gladstone.

The Government has a verdict and judgment and the defendant has brought this writ of error.

NOYES, *Circuit Judge:* The first question is whether the payment of taxes was covered by the bonds.

The bonds did not mention taxes expressly, but were conditioned upon the faithful compliance by the distiller with all the provisions of law relating to the duties of distillers. One of such provisions required the distiller to pay the taxes upon the spirits which he distilled. Consequently it is impossible to see why compliance with that provision was not a condition of the bonds. And such is the interpretation of the authorities: United States *v.* National Surety Co. (122 Fed., 904); United States *v.* Richardson (127 Fed., 893); United States *v.* National Surety Co. (157 Fed., 174); United States *v.* Fisk (176 Fed., 885); United States *v.* Bicket (24 Fed. Cas., No. 14590). See also United States *v.* Rindskof (105 U. S., 418).

The bonds in the cases cited were in form substantially like those here and we find no such difference in the subjects to which they related as to call for any differentiation in interpretation. Now do we find anything in the history of the particular statutes involved in this case which requires any other construction of these bonds than the plain one which we have given them.

The second question is whether the trial court erred in its action with respect to the commissioner's tax assessment.

The rule seems established that the assessment is *prima facie* evidence of the amount of tax due, and we see nothing in reason or authority why this rule does not exist both in respect of the distiller and of his surety. Indeed we think this the holding of the very case upon which the defendant relies, United States *v.* Rindskof (105 U. S., 418). In that case the Supreme Court said:

> The assessment of the Commissioner of Internal Revenue was only *prima facie* evidence of the amount due as taxes upon the spirits distilled between the dates mentioned. It established a *prima facie* case of liability against the distiller, and nothing more. If not impeached, it was sufficient to justify a recovery; but every material fact upon which his liability was asserted was open to contestation. He and his sureties were at liberty to show that no spirits, or a less quantity than that stated by the commissioner, were distilled within the period mentioned, and thus entirely, or in part, overthrow the assessment. They were also at liberty to show a payment of the tax assessed, in whole or in part, and thus discharge or reduce the distiller's liability. To the extent, however in which the assessment was not impaired, it was evidence of the amount due.

The court said that the assessment established "nothing more" than a *prima facie* case. It did not say—as the defendant suggests—that it established such a case against the distiller only. On the contrary, it expressly stated that a case made out by the assessment was one which the distiller "and his sureties" were at liberty to contest.

The instructions given to the jury took away from the assessment the presumption in its favor to which it was entitled and in effect left them to determine upon all the evidence presented whether the commissioner's estimate was correct. This was not entirely proper, but the error was not one of which the defendant can complain.

We find no prejudicial error in the charge or refusal to charge concerning a distiller's duty in accounting for material or concerning the statute of limitation.

The judgment of the district court is affirmed.

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(T. D. 1825.)

Alcoholic medicinal preparations.

Removing name of Elixir Calisaya Bark, manufactured by Upjohn Company, from T. D. 1794 of August 23, 1912, alcoholic medicinal preparations for the sale of which special tax is required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 31, 1912.

To collectors of internal revenue, revenue agents, and others.

An investigation discloses that Elixir Calisaya Bark, manufactured by the Upjohn Co., of Kalamazoo, Mich., and New York, N. Y., is now manufactured under a formula approved by this office, and therefore the name of this preparation will be removed from T. D. 1794, and special tax should not be required for the sale, for medicinal use only, of this preparation.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1826.)

Special tax.

Issuance of special-tax stamps to liquor dealers in prohibition territory.—No authority to refuse to issue the stamp, which is not a license but merely a receipt for the tax, and the only one which can be given.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 7, 1913.

SIR: I have the honor to acknowledge your letter of ———, with inclosure, asking for information as to why the Federal Government issued licenses to sell alcoholic liquors in communities where such liquors are forbidden by local laws to be sold, and referring to the lack of comity thus disclosed between the local and Federal Government and suggesting that the President should immediately direct internal-revenue officers to refuse any longer to issue licenses or to receive money in such territory; and requesting further that a certified copy of a license issued by the Federal Government be furnished you.

It is clear that your correspondent is under a misapprehension with respect to Federal taxes and the powers conferred on Federal officers. The Bureau of Internal Revenue issues no licenses of any kind, but is required by law to collect certain taxes, designated as special taxes, from persons engaging in certain business occupations

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or trades. Section 3232, Revised Statutes, in connection with section 3244, as amended, provides as follows:

> No person shall be engaged in or carry on any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided. * * *
>
> That retail dealers in liquors shall pay twenty-five dollars.
>
> Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.

The statutes require that, upon payment of the tax, a receipt in the shape of a stamp made and prepared in accordance with the statutory instructions shall be furnished the taxpayer, and section 3183, Revised Statutes, prohibits a collector from issuing any receipt in lieu thereof. The stamp issued is a receipt exactly analogous to the receipt issued by the Post Office Department in the shape of a postage stamp to anyone who deposits money to pay for the transportation of mail matter. There are no copies of these stamps issued. All of them are originals, and none except genuine stamps are issued by any Government officer. A certified copy of an internal-revenue stamp could no more be issued than a certified copy of a postage stamp. Furthermore, section 3243, Revised Statutes, provides that—

> The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; * * *.

There are numerous other statutory provisions, and almost every clause of these statutes has been construed in the Federal courts. The Constitution of the United States provides that all Federal taxes shall be uniform throughout the United States. The laws referred to are general laws applicable to the entire United States, and no internal-revenue officer, and no executive officer, not even the President of the United States, would have the right to nullify these laws in any so-called dry territory any more than he would in so-called wet territory. Undoubtedly the spirit of comity, to which you refer in your letter, is very desirable, but, with respect to the sale of alcoholic beverages, the Federal laws and certain local laws are in direct conflict, so that complete comity is more or less an impossibility. Under the Federal statutes and the decisions of the Supreme Court alcoholic beverages constitute a legitimate article of commerce, and the occupation of selling alcoholic beverages under Federal statutes is a legitimate occupation, for the prosecution of which the Federal statutes impose a Federal tax. So far as the Federal laws are concerned, the place of transacting this business is entirely imma-

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terial. If a person engages in the selling of alcoholic beverages in the District of Columbia, the Federal tax is collected; if he engages in business in the State of New York, the same tax is collected. If in California, Georgia, Tennessee, or Oklahoma, the same tax is collected.

There is no authority vested in any administrative officer from the President down to waive the tax or to decline to collect it when liability therefor is shown. It is entirely within the province of any State, in the exercise of its police powers, to prevent the occupation being followed; but if, without regarding local laws, a person does engage in this occupation, that does not relieve him from his liability under the Federal statutes. The only way in which the Government could fail to collect this tax in the locality referred to by you, if liability to such tax was established against any person in such locality, would be for Congress to repeal this tax provision all through the United States. Then, of course, the Federal Government would have no interest in the matter at all and would withdraw its officers and tax collectors from this branch of work all through the United States. It would appear to this office that this action would be the worst blow that could befall the persons who are sincerely desirous of enforcing local prohibitory or semiprohibitory laws.

Section 3240, Revised Statutes, provides that each collector shall keep conspicuously in his office for public inspection a list of all persons who have paid special taxes, with the place and business for which the tax was paid. Information received in this office indicates that this is one of the greatest aids in the enforcement of local laws. Of course, if no Federal tax was collected the Federal Government would have no occasion to collect such data or to be interested in any way in the local transactions of liquor dealers.

A number of bills have been introduced with a view of having the Federal Government collect the tax in some sections of the country and not in other sections of the country, or to restrict the tax collections in various ways based on local laws which are not uniform throughout the United States, all of which bills appear to this office to be unconstitutional. As above stated, however, a very simple and effective way to handle the situation, should Congress desire to do so, would be to repeal by general legislation, which would be effective all over the United States, the law requiring special taxes to be paid by persons who follow the trade or occupation of dealing in alcoholic liquors, and this appears to this office to be the only way that the matter could be handled.

Respectfully, ROYAL E. CABELL, *Commissioner.*

Mr. ——— ———, *Washington, D. C.*

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(T. D. 1827.)

Termination or vacation of office of deputy collector of internal revenue—Opinion of Attorney General.

Status of deputy collectors of internal revenue not affected by section 6 of "An Act making appropriation for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 13, 1913.

The appended opinion of the honorable Attorney General is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

DEPARTMENT OF JUSTICE, *Washington, January 3, 1913.*

SIR:-I have the honor to reply to your note of November 6, 1912, requesting my opinion on the question stated in a letter dated November 6, 1912, addressed to you by the United States Civil Service Commission.

This question is as follows:

What is the effect of the provision of section 6 of the act of August 24, 1912 (37 Stat., 539, 555), upon the provision of section 3149, Revised Statutes, as interpreted by the Attorney General in the matter of the termination or vacation of the office of deputy collector of internal revenue?

Section 6 of the act of August 24, 1912, reads, so far as is now material, as follows:

That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: * * *."

Section 3149, Revised Statutes, as amended, reads, so far as is material, as follows:

* * * In case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed.

I am of opinion that the said section 6 of the act of August 24, 1912 (the Postal Appropriation Act), does not prevent the vacation of the offices of the deputy collectors, as implied by the said section 3149, Revised Statutes.

Section 3149, in connection with the original common law (2 Ops. Atty. Gen., 410; 3 Comp. Dec., 648), has always been construed both by administrative officers and legal authorities as defining the length of tenure of the deputy collectors. It makes the term of the deputies coincident by definition with the term of the collector by whom they are appointed, with the qualification that they continue in office until the appointment of a successor collector. And this is so notwithstanding the provisions of the Civil Service Act of 1883 (22 Stat., 403). 3 Comp. Dec., 648, 653; 26 Ops. Atty. Gen., 363; 17 Comp. Dec., 362; Taylor *v.* Kercheval (82 Fed., 497); Dudley *v.* James (83 Fed., 345); Carr *v.* Gordon (82 Fed., 373); Fleming *v.* Stahl (83 Fed., 940). The two opinions of Judge Jackson, Priddie *v.* Thompson (82 Fed., 186) and Butler *v.*

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White (83 Fed., 578), which are contrary to these cases on some points, are not contrary on this main question concerning the duration of the term of office. They deal chiefly with the power of removal.

In view of these authorities and of the uninterrupted administrative practice, it must be considered as settled that, even since the Civil Service Act, the term of office of these deputy collectors expires automatically upon the appointment of a successor to their own collector. In order to continue in office after that time they must be affirmatively reappointed and recommissioned.

This being so, it is apparent that the provision in section 6 of the Postal Appropriation Act of 1912 does not affect the situation, for that act deals only with "removals," which are, of course, quite distinct from automatic terminations by law of terms of office. Parsons *v.* United States (167 U. S., 324, p. 342). The distinction is clearly brought out by Revised Statutes, section 3148, which deals with the removal of the deputies, in advance of the expiration of their terms referred to by Revised Statutes, section 3149.

I am of opinion, therefore, as above stated, that section 6 of the Post Office Appropriation Act of August 24, 1912, does not repeal the existing limitation upon the tenure of these deputy collectors.

Respectfully, GEO. W. WICKERSHAM, *Attorney General.*

The PRESIDENT.

(T. D. 1828.)

Cancellation of export bonds for distilled spirits.

Originals of export bonds, transportation for export bonds, and bonds covering spirits transferred to manufacturing warehouses to be retained in collectors' offices. Notation to be made on such bonds of quantity exported and evidence of exportation to be then forwarded to commissioner's office.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 11, 1913.

To collectors of internal revenue:

Regulations No. 2 (pp. 60 and 61), which state in substance that no credit will be allowed on bonded accounts, Form 94*a*, parts 1 and 2, Form A–94, and Form 410 for spirits removed for export under sections 3330 and 3330*a*, Revised Statutes, unless such accounts are accompanied by the canceled bonds and evidence upon which the same were canceled, are hereby modified as follows:

Originals of export bonds, Form 547, transportation for export bonds, Form 548, and bonds covering distilled spirits withdrawn for transfer to bonded manufacturing warehouses, Form 643, together with originals of entries for withdrawal, Form 206, bills of lading, and pieces of export stamps will be retained by collectors of internal revenue in their offices for use as their official files.

Upon receipt of evidence of clearance, landing abroad, or receipt into bonded manufacturing warehouse, as the case may be, collectors will note on the face of such bonds the quantity covered by such evidence, the date such credit is entered thereon, and the date of the certificate or other evidence upon which the credit is based.

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The clearance certificate, landing certificate, receipt into bonded manufacturing warehouse, or other evidence upon which the credit is given should have indorsed thereon the date the quantity covered thereby was credited to the bond, and immediately thereafter be forwarded to the office of the Commissioner of Internal Revenue to be filed with the duplicate of such bond in his office.

In cases where the original intention to export or transfer to manufacturing warehouse has been abandoned and the principal on the bond desires to tax pay the spirits covered by the bond, subject to the permission of the Secretary of the Treasury, the collector will, upon payment of the tax on said spirits, issue the necessary tax-paid spirit stamps and dispose of same as he may be directed by this office The bond should then be canceled and the cancellation will include a statement of the facts over the collector's signature. A report will be made on Form 93c to show the sale of the stamps and the reason for such sale.

Credit should not be taken on the bonded accounts for a quantity covered by any bond until the full quantity embodied in the body of the bond has been accounted for, and if a deficiency is found to exist between the quantity withdrawn from the internal revenue bonded warehouse and the quantity exported or received into the manufacturing warehouse, the tax on such deficiency must be paid or abated before the credit is taken for the quantity covered by the bond.

Respectfully, ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH, *Secretary of the Treasury.*

(T. D. 1829.)

Instructions relative to preparation of report on Form 51B.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 18, 1913.

To collectors of internal revenue:

A supply of Form 51B, revised October, 1912, has been furnished each collector, and should be used exclusively, beginning with report for the month of January, 1913.

In making up this report, care should be taken to see that totals of all columns in which there are entries are given on lines "Total regular lists," "Total corporation tax lists," "Total regular and corporation tax lists," "Total stamps," and "Grand totals, lists and stamps," as all these totals are required for checking in this office, and that each statement is in balance.

Special attention is invited to the footnote marked with the asterisk and to notes A, B, and C on the reverse.

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Invariably the total amount of each list must be taken up at the left of the first money column of Form 51B for the month in which the Form 23½ is receipted, the amount of advance collections thereon previously reported placed underneath, and the difference carried into the first money column. This rule should be followed even when nothing has been assessed on Form 23 and charged on Form 58, in order that a complete record of lists may be found on the reports on Form 51B.

In the third money column, "Amount abated per order No. ——," the full amount of all abatements of taxes assessed in column 10 of Form 23, per abatement orders dated within the month, should be accounted for, and of this amount all abated in excess should be entered on line "Abated in excess on list for ——," and charged on same line in the first money column.

In the "Statement of stamps," no fractions should be used, but the actual values to the nearest cent of stamps sold, returned, and on hand should be given.

The amounts reported in the last money column, "Value stamps on hand," should be verified by actual count, as required by Regulations No. 2, page 23, last paragraph.

Excesses arising in the sale of stamps on account of fractions should be charged each month on Form 58 of the regular list and included in the amount reported on line "Advance collections."

ROYAL E. CABELL, *Commissioner.*

(T. D. 1830.)

Corporation tax—Building and loan associations—Decision of court

1. CAPITAL STOCK REPRESENTED BY SHARES.

A building and loan association has a "capital stock represented by shares" when in case of dissolution the assets would be distributed pro rata among the shareholders, although the shareholding membership is constantly changing.

2. EXEMPTION.

Building and loan associations organized and operated exclusively for the mutual benefit of the members, "no part of the net income of which inures to the benefit of any private stockholder or individual," are exempt.

3. ASSOCIATIONS NOT EXEMPT.

Associations providing for the loaning of funds to nonmembers, for issuing preferred or guaranteed interest-paying stock, and allowing directors to cancel outstanding certificates of general stock not borrowed upon, paying the holder the book value of stock canceled, thereby being authorized to retire any and all stock in their discretion, are not exempt.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 1, 1913.

The appended decision of Judge Cushman in the United States District Court for the Western District of Washington is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

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DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION. No. 1132.

Pacific Building & Loan Association, a corporation, complainant, v. *Millard T. Hartson, defendant.*

[Filed Jan. 21, 1913.]

Plaintiff's citations: Flint *v.* Stone-Tracy Co. (220 U. S., 151–2); United States *v.* Trinidad Coal Co. (137 U. S., 160); Union Ins. Co. *v.* Hodge (62 U. S. (21 How.), 35; 16 L. ed., 61); Gibbons *v.* Mahon (136 U. S., 549); Latimer *v.* Equitable L. & Inv. Co. (81 Fed., 776, 782); Sharon *v.* Sharon (16 Pac., 345–359); Robinson *v.* Wolf (62 N. E., 74 and 77; 27 Ind. App., 683); Spruance *v.* Farmers and Merchants Ins. Co. (10 Pac., 285 at 287; 9 Colo., 783); Hamilton *v.* Des Moines Valley R. Co. (36 I., 31 at p. 39); Mygatt *v.* New York Pro. Ins. Co. (21 N. Y., 52 at 65); Muller *v.* St. Life Ins. Co. (60 N. E., 958, 960; 327 Ind. App., 45); Splawn *v.* Chew (60 Tex., 532–5); Cook on Corporations, 3 ed. (secs. 9 and 12); Fisher *v.* Essex Bank (5 Grey, p. 373); *In re* Stillwell Est. (34 N. Y. Sup., 1123); *In re* Birdsalls Est. (49 N. Y. Sup., 450 and 455); Opinions Attorney General for 1910 (p. 194).

Defendant's citations: 39 Cyc., 257; Eversman *v.* Schmitt (41 N. E., 139, 141, 142); 6 Cyc., 120; 28 Cyc., 1781; 36 Cyc., 1304–7; Rhodes *v.* Mo. Sav. & Loan Co. (50 N. E., 998 at 1000); Opinions of Attorney General for 1910 (p. 189 and following).

CUSHMAN, *District Judge:* This case is brought asking the refunding of certain corporation taxes paid by complainant to the defendant, collector of internal revenue, and that the collection of further taxes be enjoined. The tax is under section 38 of the act of August 5, 1909. (36 Stat. L., pt. 1, 112.) Complainant claims that it does not fall within the act, and that, if it does, it comes within the exception therein. The act provides:

That every corporation, joint stock company or association organized for profit and having a capital stock represented by shares * * * shall be subject to pay annually a special tax * * *: *Provided, however,* That nothing in this section contained shall apply * * * to domestic building and loan associations, organized and operated exclusively for the mutual benefit of the members, * * * no part of the net income of which inures to the benefit of any private stockholder or individual.

The cause is before the court upon defendant's demurrer to the complaint, which alleges that complainant is a Washington corporation, organized under the laws of that State relating to the incorporation of building and loan associations. The Washington statutes provide:

Whenever any number of persons not less than 10 desire to be incorporated as a building and loan association, for the purpose of accumulating the savings and funds of its members and lending its shareholders or others the funds so accumulated, they shall make and execute a written declaration to that effect in the form now provided by statute for the execution of deeds of real estate, to entitle the same to record. * * * Upon complying with the foregoing requirements and upon filing an affidavit of proof of such publication in the office of the Secretary of State, the persons executing such declaration, their associates and successors, shall become a corporate body. (Sec. 7128 Pierce's Code; sec. 3601, 2 Rem. and Bal.)

The name "building and loan association," as used in this act, shall include all corporations, societies, organizations, or associations doing a saving and loan or investment business on the building society plan, whether neutral (mutual) or otherwise, and whether issuing certificates of stock which mature at a time fixed in advance or not. (Sec. 7149 Pierce's Code; sec. 3622, 2 Rem. and Bal.)

Any shareholder whose stock has not been declared forfeited in such association, and whose share or shares are not pledged upon a loan, may withdraw such share or shares from the association at any time after one year, by giving at least sixty days' notice in writing to the secretary of his intention to do so. * * * (Sec. 7154, Pierce's Code; sec. 3627, 2 Rem. and Bal.)

All corporations organized in this State and doing business in this or any other State as building and loan associations shall comply with and be subject to all the provisions of this act within sixty days after its passage. * * * (Sec. 7160, Pierce's Code; sec. 3633, 2 Rem. and Bal. Code.)

Each association shall adopt by-laws for its government and therein describe the manner in which its business shall be transacted, which by-laws shall be in conformity

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with the provisions of this act and the laws of this State. * * * (Sec. 7130, Pierce's Code; sec. 3603, 2 Rem. and Bal.)

For every loan made a note or bond secured by first mortgage on real estate shall be given, which security shall be double the value of the loan and satisfactory to the directors, and where the borrowers are shareholders of the association the loan shall also be secured by a pledge of their shares as collateral security: *Provided*, That the directors in their discretion may loan upon the security of the association stock to the amount of its withdrawal value, and may also loan upon or invest in approved Federal, State, county, and municipal bonds and warrants. (Sec. 7131, Pierce's Code: 3604, Rem. and Bal.'s Code. vol. 2.)

The articles of incorporation provide:

We do desire to be incorporated as a building and loan association for the purpose of accumulating the savings and funds of the members of said association and lending the shareholders of such association and others the funds so accumulated. The business operations of this association are to be confined wholly to Pierce County and the counties adjacent thereto.

Provision is also made for ten directors. The by-laws provide that the company—

is entirely *mutual*, there being no preferred stock. No member shall hold more than *one hundred shares of stock*.

The *authorized capital stock* of this company shall be four million ($4,000,000) dollars, *divided into forty thousand (40,000) shares* of the par value of one hundred ($100) dollars each.

It is further provided that the directors *shall be elected by the shareholders* who vote by share, unless in arrears. The directors pass upon all loans, fix the rate of interest, and direct its investments.

The by-laws provide:

ARTICLE IV.

SECTION 1. The stock issued by this association shall be of one kind, to wit:

Investors' guaranteed dividend stock which is payable in monthly installments of fifty cents (50c) for each share, the par value of which shall be one hundred ($100) dollars. If the payments on this stock are made regularly for a period of ninety-six (96) months, and not otherwise, the then legal holder may withdraw all payments so made with interest at the rate of seven per cent (7%) per annum for the average time the payments have been on deposit, and all other profits that may have accrued to the credit of said shares: *Provided*, That the entire amount may be paid at any time, and the extra payments so made may be withdrawn on sixty days' notice with interest at the rate of five per cent (5%) per annum. No interest will be allowed on a deposit withdrawn before six months. The payments on this stock are due and payable on the twentieth day of each and every month.

The following table is the guaranteed loan and surrender values after one year, based on one share:

Paid-up certificates for—

12 months: Loan, $3.08	$10.00
24 months: Loan, $8.32	21.00
36 months: Cash, $18	32.00
48 months: Cash, $24.35	42.50
60 months: Cash, $31.80	53.00
72 months: Cash, $39.33	63.00
84 months: Cash, $48.71	72.00

96 months: Return of all payments, with 7 per cent per annum for average time on deposit.

Not more than one-half of the money received in stock payments shall be used to pay withdrawing members, and such payments shall be made in the order in which certificates have been presented for cancellation.

ARTICLE V.

SECTION 1. The investment fund shall consist of all money received on stock payments and all profits earned, except such proportion thereof as belongs to the expense fund as provided in these by-laws, and shall be chargeable with all dividends declared, interest upon borrowed money, interest paid on the withdrawal of stock, and all taxes and fire insurance premiums or other sums necessarily expended to protect the investments or loans of the company.

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SEC. 2. The expense fund shall consist of membership fees and other premiums on stock, and one per cent (1%) per annum on the par value of all stock issued by this company, and one per cent (1%) per annum on all loans to nonmembers of the association. The expense fund shall be chargeable with all expenses of management.

SEC. 3. A surplus fund shall be created by using twenty-five per cent (25%) of the expense fund herein provided for, which surplus fund shall be drawn on when necessary to fulfill any guaranty.

During the month of January of each year, beginning with the January prior to the maturity of the first outstanding stock, the directors shall determine what amount of such accumulated surplus fund is necessary to meet the outstanding guaranties and the balance of such fund shall be distributed to the stockholders whose stock matures during that calendar year.

The moneys in said fund may be invested in the discretion of the board of directors in such forms of investment as other funds of the company are required *by law* and these by-laws to be invested.

SEC. 4. Whenever the directors consider it advisable, they are authorized to borrow money temporarily for the company.

SEC. 5. Whenever considered advisable by the executive committee, they are authorized to enter into a contract or to ratify any contract already made with one or more persons to develop the company's business: *Provided*, no further compensation be allowed than the amount set aside in these by-laws as an expense fund.

Section 1, Article VI, of the by-laws is the same as section 7131 (sec. 3604 Rem. and Bal.) of the statute above set out.

ARTICLE VII.

SECTION 1. At any time, should the directors find that the income of the association can not be loaned profitably, they may cancel any outstanding certificates of *general stock* not borrowed upon, and shall pay the legal holder thereof an amount equal to the book value of stock so canceled, and the depositing of a copy of the resolution of the board of directors ordering the redemption of such stock, postage prepaid, in the post office at Tacoma, Wash., addressed to the last known address of each shareholder as furnished to the association and as shown by its books, shall be deemed a good and sufficient tender, and within thirty (30) days thereafter all the rights and equities of any holder of any such stock in any further profits shall be terminated.

The injunctive relief herein must be denied under the plain provisions of section 3224, Revised Statutes (Thomson Federal Statutes Annotated, vol. 3, p. 600).

Complainant sues as a corporation. It is admitted that it is a corporation organized for profit under a law, but complainant contends that it has not a capital stock represented by shares. The "building and loan association" statutes cover, not only "mutual" companies, but those doing business planned on other lines. They also insure the shareholder, whose stock has not been forfeited and whose shares are not pledged, the right of withdrawal, and all of the provisions of the act are made applicable to those corporations organized and doing business in the State as building and loan associations.

The articles provide that the issued capital stock of the company shall be $4,000,000, divided into 40,000 shares of the par value of $100 each; that no member shall hold more than 100 shares of the stock, and that the shareholders shall vote for the corporate directors by the share. There are other provisions in the articles and by-laws concerning the shares of stock in this corporation; but the complainant contends that mere words should be disregarded and the character of the association examined.

In an ordinary corporation the capital stock is fixed, and the shareholder has a right to a voice in its management, a share in its profits, and to receive an aliquot part of the proceeds of its capital on the winding up of a corporation. It is contended that these are essentials which show that the shares issued by the complainant differ from corporate shares.

If this corporation were at any particular time dissolved, the assets of the corporation would unquestionably be distributed pro rata among the then shareholders. Therefore, as to its present members, it is a corporation having capital stock represented by shares, although, by the maturing of the stock and the retirement of shareholders, its shareholding membership is constantly changing.

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A building and loan association differs in some respects from the ordinary corporation, but the Federal statute itself shows, by the exception therein contained, that Congress intended to exempt what would otherwise have been included but for the express exception. The exemption is not of all building and loan associations, nor those tested by the ordinary characteristics of corporation shares of stock above pointed out, but the exemption is of "domestic building and loan associations * * * organized and operated exclusively for the mutual benefit of the members, no part of the net income of which inures to the benefit of any private stockholder or individual."

A shareholder in the complainant corporation does not acquire with his shares a fixed aliquot part in the property of the corporation, but only such par of its authorized stock. With an increase in its membership, the fraction representing his interest in the whole has become smaller, but the total capital correspondingly is increased, so that the actual value should not diminish, but it is not a fixed share of the whole.

The tax is not upon corporations "divided" into shares, but "represented" by shares. The former would imply more fixity than the latter. No matter how the stock issued in this corporation expands or contracts, it continued to be "represented" by shares until the last share is retired.

Only one kind of stock is provided for in the by-laws, designated as "Investors guaranteed dividend stock" and bearing interest at the rate of 7 per cent for the average time the payments have been upon deposit. It has been argued that this guaranty feature does not destroy the mutuality of the shareholders in all of the profits; that if all of the stockholders were to exercise the privilege of withdrawing at the same time the guaranty would be of no value. In practice such a thing would not likely occur. Those whose stock has matured, and who exercised the privilege, secure 7 per cent under the guaranty, together with other profits that may have accrued to the credit of said shares. If the association had made less than 7 per cent profit annually, when a sufficient number of its shareholders had exercised the privilege afforded by the guaranty, the remainder would be stripped of their profit.

There is a further provision in the by-laws (p. 13 of the bill of complaint) which states:

> Not more than one-half of the money received in stock payments shall be used to pay withdrawing members, and such payments shall be made in the order in which certificates have been presented for cancellation.

Clearly the effect of this provision is to make two classes of stock. Assuming that a uniform profit of 7 per cent is made upon investments and loans, then under the guaranty above the first half of the subscribing shareholders would have the absolute right of withdrawal; but the rest—the later subscribers—would be forced to remain in the company, which would make their stock "common stock." If the profits were less than 7 per cent, they would not receive as much as the early subscribers exercising the privilege of withdrawal, and if the profits were more than 7 per cent their profits would be greater. In any event, the "mutuality" in the profits of the association is clearly destroyed by this provision.

In view of the provisions for the loaning of the funds of the corporation to nonmembers, for issuing preferred or guaranteed interest-paying stock, and that allowing the directors, upon finding that the income of the association can not be loaned profitably, to "cancel any outstanding certificates of general stock not borrowed upon," paying the holder the book value of the stock so canceled, thereby being authorized to retire any and all stock in their discretion, it is clear that the complainant can not be said to be organized * * * exclusively for the mutual benefit of the members, no part of the net income of which inures to the benefit of any private stockholders or individuals.

Demurrer sustained.

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(T. D. 1831.)

Denatured alcohol.

Authorizing a formula for use in the manufacture of transparent soap.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 31, 1913.

SIR: This office is in receipt of your communication dated January 30, 1913, stating that you had found that the two special denatured alcohol formulas, namely, Nos. 1 and 3, authorized for use in the manufacture of transparent soap, were unsatisfactory for reasons stated. You request that Formula No. 3 be modified by omitting the "one-half gallon of 36 degree Baumé caustic soda lye." Such a formula, in your opinion, will be thoroughly satisfactory to the manufacturers of transparent soap.

The reasons submitted for the modification have been found to be satisfactory to this office, and therefore hereafter the following formula will be authorized for use in the manufacture of transparent soap:

FORMULA No. 3a: To 100 gallons of ethyl alcohol there is added 6 gallons of the following mixture: Five gallons of commercially pure methyl alcohol, having a specific gravity of not more than 0.810 at 60° F., and 1 gallon of castor oil.

Respectfully, ROYAL E. CABELL, *Commissioner.*

Mr. ——— ———.

(T. D. 1832.)

Regulations governing the withdrawal of distilled spirits from bonded warehouses, free of tax, under the provisions of section 3464, Revised Statutes.

TREASURY DEPARTMENT, *February 10, 1913.*

Section 3464 of the Revised Statutes of the United States provides:

The privilege of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which now does or hereafter shall exist by provision of law, shall be extended under such regulations as the Secretary may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title. (Title XXXV, Int. Rev.)

Pursuant to the foregoing provision of law, the following regulations are prescribed for the withdrawal of distilled spirits from bonded warehouses free of tax for the use of the United States:

ARTICLE 1. Where distilled spirits, stored in a distillery warehouse or in a special or general bonded warehouse, are purchased for the use of the United States, application for the withdrawal thereof free of tax will hereafter be made by the head of the department, or head of

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bureau not under control of any department, for which the spirits are purchased, which application will be on internal revenue Form No. 543.

When alcohol or high-proof spirits are to be withdrawn free of tax for the use of the United States for shipment in tanks or tank cars, as provided by the act of March 2, 1911, metal storage tanks must be provided in the distillery bonded warehouse to be constructed, equipped, and arranged in all respects with proper pipe connections and suitable weighing tanks, as required by Internal Revenue Regulations No. 30, and applications for the withdrawal of alcohol or high-proof spirits therefrom, the issuance of permits, and the rendering of certificates of receipts will be the same in all respects as for spirits contained in original packages, except that in describing the spirits the serial number of the storage tank will be given. Such description may be entered in the columns now provided in said forms for serial numbers, etc., of original stamped packages.

ARTICLE 2. If the distilled spirits purchased for the use of the United States under specified contracts are to be delivered from time to time in such quantities as occasion may require, requisition for same may be made in the following form:

Requisition No. ——.
Contract No. ——.

Requisition for withdrawal of distilled spirits, free of tax, under the provisions of section 3464, Revised Statutes, for the use of the United States.

——— DEPARTMENT,
———, *191–*.

To the SECRETARY OF THE TREASURY:

Requisition is hereby made under the provisions of Section 3464, Revised Statutes, for ——— wine gallons and ——— taxable gallons of distilled spirits now deposited, or to be hereafter deposited, in internal-revenue bonded warehouses, and to be withdrawn therefrom, free of tax, at such times and in such quantities as occasion may require.

The distilled spirits above specified have been purchased or contracted for by this department for the use of the United States at a price not including the tax thereon, or any part thereof, and is to be delivered to[1] ———, or either of them for shipment to the inspector of powder at[2] ———.

———,
Secretary of the ——— Department.

ARTICLE 3. After such requisition has been filed, applications for the withdrawal of the spirits, in specified lots, may be made by the contractor or distiller named in the requisition. If a general transportation and delivery bond has been given as provided in article 5, applications thereunder may be filed directly with the Commissioner of Internal Revenue; otherwise the application in each case should be filed with the collector of the district in which the distillery warehouse is located, together with the required bond, Form 544, in

[1] Here state name of contractor or distiller.
[2] Here state place where the distilled spirits are to be delivered.

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duplicate. Upon approval of such bond, the collector will at once forward the duplicate with the application to the commissioner. The application, in either case stated, will be in the following form:

FORM No. ——.

Requisition No. ——.
Contract No. ——.

Application for withdrawal of distilled spirits, free of tax, under the provisions of section 3464, Revised Statutes, for the use of the United States.

——— ———,
———, *191–.*

To the SECRETARY OF THE TREASURY:

Pursuant to a requisition heretofore made by the Secretary of ——— Department, under the provisions of section 3464, Revised Statutes, application is hereby made for the withdrawal from the distillery warehouse No. ——, of ———, in the ——— district of ———, free of tax, of the following-described distilled spirits, deposited or to be deposited in said warehouse on or about the —— day of ———, 191–.

Number of packages or tanks.	Serial Nos. of packages or tanks.	Serial Nos., warehouse stamps.	Wine gallons.	Degree of proof.	Tax gallons.
.....	.....	.....	.....	.....	.....

The above described distilled spirits are intended for the use of the United States, and will be consigned to ———, at ———.

——— ———,
Contractor or Distiller.

ARTICLE 4. Upon receipt of application in either of the cases heretofore referred to, permits in duplicate for the withdrawal of the spirits described in the application will be issued on Form No. 1508, the original of which will be forwarded to the collector of the district in which is located the bonded warehouse from which the spirits are to be withdrawn, and the duplicate to the department making the application for withdrawal. The duplicate of said permit, after the receipt on the reverse side thereof has been signed by the head of the department or independent bureau, or by the principal to the transportation and delivery bond, will be forwarded directly to the contractor, distiller, or other party to whom the spirits are to be delivered.

ARTICLE 5. Upon the receipt of the original permit, and before the delivery of the spirits to the designated person, the collector will require of such person a transportation and delivery bond in duplicate, with satisfactory sureties, and in a penal sum of not less than the tax on the spirits to be withdrawn. If this bond is intended to cover specific spirits it may be made on Form 544. If the bond is intended to cover spirits deliverable at various times, and in such quantities as may be ordered by the department for which the same is intended, the parties contracting to deliver such spirits may exe-

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cute a continuing transportation and delivery bond in duplicate, in the following form:

BOND, FORM No.——.

For the transportation and delivery of distilled spirits from bonded warehouse under the provisions of section 3464, Revised Statutes.

Know all men by these presents, that we, ——— ———, of ———, as principal, and ——— ———, of ———, and ——— ———, of ———, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ——— thousand dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this —— day of ———, 191–.

Whereas the above bounden principal has sold or agreed to deliver to the United States certain distilled spirits now deposited, or to be hereafter deposited, in the following-described bonded warehouse— in the ——— collection district of ———, to wit:

(1) ——— bonded warehouse No. ——, of ———.
(1) ——— bonded warehouse No. ——, of ———.
(1) ——— bonded warehouse No. ——, of ———.

which spirits are to be withdrawn from said warehouse— free of tax, under permits to be issued by the Secretary of the Treasury, pursuant to the provisions of section 3464 of the Revised Statutes of the United States.

Now, therefore, the condition of this obligation is such that if the above bounden principal shall, as to all such spirits so sold, and as to all such spirits hereafter so sold, and withdrawn from either of said warehouses, safely deliver the same, or cause the same to be delivered, to the person or persons, and at the place or places, designated in said permits, and shall, as to each lot of spirits so withdrawn, and within 30 days from the date of each such withdrawal, furnish to the collector of internal revenue of the district aforesaid the evidence prescribed by the Secretary of the Treasury, showing the due delivery of such spirits to the person or officer so designated in the permit for withdrawal, and shall on demand well and truly pay, or cause to be paid, to the said collector the tax on all such spirits so withdrawn as aforesaid, and not so delivered, then this obligation to be void, otherwise to remain in full force and virtue. And it is hereby expressly stipulated and agreed that this obligation shall extend to and include all spirits receipted for by the above bounden principal or his agent, on the permits so issued for the withdrawal of such spirits from said warehouses or either of them.

——— ——— [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]

Signed, sealed, and delivered in the presence of—

———.
———.

ARTICLE 6. Upon execution of the bonds described above, and on the payment of the tax on any excessive loss ascertained on regauge of the spirits, the collector will sign the order of delivery on the back of the duplicate permit directing the storekeeper assigned to the bonded warehouse from which the spirits are to be withdrawn to make delivery of the spirits to the persons named in such order.

[1] Distillery, special or general, as the case may be.

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Upon the delivery of such spirits, the storekeeper will indorse on the duplicate permit the date of delivery, and return the same to the collector.

ARTICLE 7. When spirits are to be transported by a common carrier, the collector will require of the shipper a bill of lading covering the spirits from the point of shipment to final destination, which will be filed with the copy of the bond in his office.

ARTICLE 8. For the cancellation of bonds, Form 544, a certificate of receipt on Form 545 will be required. Such certificate should be forwarded to the Commissioner of Internal Revenue through the collector of the district from which the spirits were obtained, and where on inspection a loss in transit as to any package is found to exceed 1 proof gallon, such loss should be noted on such certificate by the receiving officer, who should in such cases also specify the serial number of each such package, the ascertained loss as to each, and whether the condition of the package when received indicated that the loss was due to leakage or other unavoidable cause. Losses in transit as to spirits shipped in tank cars will likewise be noted on the certificate, Form 545, and where the reported loss, i. e., the difference between the quantity reported shipped and the quantity actually received, does not exceed one-half of 1 per cent, and is due either to variance in gauge or actual leakage no assessment of tax in such cases will be made.

Where a continuing transportation and delivery bond is given, as provided in article 5, collectors will debit each bond with the tax on the spirits removed thereunder, and credit the bond with the tax on all spirits so removed and duly accounted for by proper certificate of receipt on Form No. 545. Where, by reason of outstanding charges, the bond is insufficient to cover further withdrawals, an additional bond will be required.

In case of any noticeable discrepancy between the quantity shipped and the quantity so received the collector will proceed to collect from the shipper the tax on such deficiency.

ARTICLE 9. The spirits withdrawn from bonded warehouses under the provisions of this circular will be reported by storekeepers on their daily and monthly reports, and by collectors on their bonded accounts, as in the case of spirits withdrawn for scientific purposes under the provisions of section 3297, Revised Statutes. Entry for withdrawal must be filed in each case by the distiller on modified Form 179, as required by mimeograph Circular 812.

ARTICLE 10. Where samples of bonded distilled spirits or other taxable articles are desired for the use of the United States, free of tax, application therefor should be made under the provisions of section 3464, Revised Statutes, and in form similar to that heretofore prescribed for the withdrawal of distilled spirits in original

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packages. The samples desired should be fully described as to kind, quantity, and number; and, when practicable, the name of the manufacturer, the collection district and place of storage, and, in case of distilled spirits, the particular package or packages from which such samples are to be taken, should be stated in the application.

Where, however, the samples applied for embrace articles of various kinds, grades, or manufacture, application in such case will be forwarded to the Commissioner of Internal Revenue, who will issue the necessary instructions to the respective collectors for obtaining and forwarding such samples; and, to insure the forwarding of the same, the application made should state that the necessary expenses in procuring and forwarding such samples will be paid on presentation of proper vouchers.

Where sealed samples or samples to be taken under the personal supervision of a Government officer are desired, the application should so state.

FRANKLIN MACVEAGH,
Secretary of the Treasury

(T. D. 1833.)

Special excise tax on corporations.

Modification of note in item No. 99, and items 100, 101, and 103 of T. D. 1742, relative to claims for unearned increment in returns of annual net income of mining corporations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 18, 1913.

To collectors of internal revenue, revenue agents, and the corporations concerned:

There have been several inquiries as to the application of the regulations relative to an allowance for an unearned increment in the ascertainment of net income of mining corporations for the special excise tax on corporations, which indicate that the true intent of the regulations is not understood. The fact has also developed that many corporations, in their attempt to apply the regulations, begin with a current unit valuation of the product concerned instead of the en bloc value as of January 1, 1909, as is required. The manner of entering the ascertained valuation as of record has also been neglected and misunderstood.

In order to make the requirements of this office plainer and to assist corporations in arriving at valuations which shall not be

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speculative in character nor founded upon the future profits and earnings of the corporations which should belong to the period during which they are earned, and in order that no portion of income which really belongs to any particular year shall be ascribed to or allotted as the earnings of previous years, items Nos. 99, 100, 101, and 103 of T. D. No. 1742 are modified so as to read as follows:

No. 99. The note is amended so that it shall read:

NOTE.—Values, as aforesaid, should not be estimated on the basis of the assumed salable value of the output under current operative conditions, less the actual cost of production, because, as hereinbefore stated, the selling price under such conditions comprehends a profit both for carrying the investment in coals, etc., improvements and working capital, and for conducting operations in respect of production and disposal of product. The value to be determined as stated must be on the basis of the *salable value en bloc* of the entire deposit of minerals and mineralized property owned, exclusive of improvements and development work, if the same were disposed of in that form.

No. 100 is amended to read:

The unit value as of January 1, 1909, ascertained as above outlined, would indicate the value to be attached at that date to the capital assets disposed of during any calendar year succeeding. The amount claimed as a deduction from gross income on account of unearned increment shall be shown separately in the deductions from gross income in the return of annual net income.

No. 101 is amended to read:

The precise detailed manner in which the estimate of value of minerals, etc., as at January 1, 1909, shall be formed, must naturally be determined by each corporation interested. Every corporation claiming and making a deduction for unearned increment, as provided in section 100 preceding, shall maintain an official book record of the properties owned by it in connection with which unearned increment is claimed, and which record shall show the general ledger or general balance sheet value thereof, together with the estimated amount of appreciated value in such properties in excess of general balance sheet values, as of January 1, 1909, together with all evidence and information on basis of which such appreciated value was formed. This estimate must be formed on the lines and basis indicated in the "note," section 99, namely, the salable value of the entire deposit considered en bloc. This record should also present clearly and fully the transactions during each year in respect of quantities of minerals disposed of and for which deductions are made respectively for depreciation and unearned increment, together with the amount thereof. *No deduction for unearned increment will be allowed unless the aforesaid record is kept, nor unless the evidence as to the estimates of quantity of minerals in deposit and the valuation thereof are accepted by the department.* Values determined and recorded as of January 1, 1909, as aforesaid, should be used in the compilation of all subsequent years' excise tax returns.

In case it subsequently develops the property possesses a greater quantity of mineral, etc., reserve than was in the aggregate estimated as of January 1, 1909, only such an amount of aggregate value can be assigned to such excess mineral tonnage as of January 1, 1909, as it was at said date estimated by the company attached to the property and was not assigned by it, as hereinbefore provided, to the specified tonnage in the property.

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No. 103 is amended to read:

As to the amount to be deducted for depletion of deposits (Regulation No. 101) is to be formed on basis of the estimated reserve of minerals, etc., it follows that if it develops such estimate is understated, the cost investment and estimated unearned increment in the capital asset may be wholly extinguished before all mineral reserves are removed. When this is reached, further deductions for exhaustion of minerals should be discontinued.

Collectors of internal revenue will make requisition for the necessary number of these amendments and furnish a copy to each corporation interested.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1834.)

Exportation by parcel post of tobacco, snuff, cigars, cigarettes, or playing cards free of tax.

[Regulation No. 29—Supplement No. 1.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 17, 1913.

1. Where tobacco, snuff, cigars, cigarettes, or playing cards are to be exported from the United States by parcel post free of tax, the manufacturer or exporter will first file with the collector of internal revenue in whose district the manufactory is located a bond in duplicate in the following form, with sureties satisfactory to that officer and in a penal sum of not less than $1,000.

BOND, FORM A.

Exportation of ——— [1] *by parcel post.*

Know all men by these presents, that we ——— ———, of ———, as principal, and ——— ———, of ———, as sureties are held and firmly bound to the United States of America in the full and just sum of —— dollars, lawful money of the United States, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ———, 191–.

Whereas the above bonded principal intends to remove from the place of manufacture certain ——— [1] without payment of internal-revenue tax, for exportation from the United States by parcel post, under the provisions of the internal-revenue laws applicable thereto.

Now, therefore, the condition of this obligation is such that if the said principal shall as to all such articles so removed by him duly deliver the same to the postmaster at the post office nearest the place where such articles are manufactured and shall within five days from the date of such removal and delivery produce to the collector of internal revenue of the district where such articles were manufactured a certificate of mailing duly signed by such postmaster showing the receipt of such articles for mailing to a place outside the jurisdiction of the United States, or in default of such evidence of mailing for export, shall pay to the collector aforesaid the tax on all such articles as to

[1] Insert name of article.

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which such default occurs, and a like amount as a penalty in addition thereto, then this obligation to be void; otherwise to remain in full force and virtue.

——— ——— [SEAL.]
——— ——— [SEAL.]
——— ——— [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———
——— ———

2. Upon the acceptance of the foregoing bond by the collector the exporter will, before removing for export any of the articles described in his bond, file with the collector an entry in the following form:

FORM No. B.

Entry of ———[1] *for export by parcel post.*

Entry of ———[1] to be removed, free of tax, from the manufactory of ———, situated at ———, in the —— collection district of ———, State of ———, for shipment and exportation by parcel post to ———. (Here state place of destination.)

Number of cases.	Name and address of consignee.	Number of packs or weight.	Rate of tax.	Amount of tax.

And I, ——— ———, manufacturer (or ———[2]), do solemnly declare that the above described articles are truly intended to be shipped and exported as herein above stated and not to be brought brought back or relanded within the limits of the United States.

———,
Manufacturer.
By[2] ——— ———

3. All such removals made during the month will be reported by the collector on his bonded account, 94B or B94, under the head of "Removed for export," and such removals will constitute a charge against the exporter's bond, Form A.

4. Upon receipt of the required "certificate of mailing" the same will be carefully examined by the collector, and if found to be in due form and to fully cover the articles removed for export, credit therefor will be allowed on the exporter's bond, and like credit will be taken by the collector on his bonded account under the head of "Exported and accounted for." Such certificates of mailing should be forwarded by the collector to this office with the account on which such credit is taken.

5. The foregoing regulation will take effect March 1, 1913, and until blanks of the forms herein prescribed are furnished typewritten forms may be used.

ROYAL E. CABELL, *Commissioner.*

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

[1] Insert name of article.
[2] President, secretary, or treasurer, in case of a corporation, or member of firm, in case of copartnership.

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(T. D. 1835)

Reused packages—Taking actual tare.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 3, 1913.

To collectors of internal revenue:

The regulations contained in the first full paragraph on page 25 of the Gaugers' Weighing Manual (1911) are hereby amended so as to read as follows:

The quantity of spirits which may be absorbed by wooden packages which have been previously filled depends in a great measure upon the time the same remained empty prior to the refilling, and accordingly the average of the increase in tare of such casks will not be made, as provided above, unless at least 33⅓ per cent of the casks are selected and weighed empty in accordance with the foregoing provisions.

This amendment is to become effective on and after April 1, 1913.

Collectors will supply a copy of this circular to each distiller and to each gauging officer in their respective districts.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1836.)

Stockholders in distilling corporation—Court decision.

1. STATUTORY CRIMES.
   Where a crime is made a felony by statute, it is not necessary to charge in the indictment that it was feloniously committed.
2. SPECIFIC ENTRIES AND DESCRIPTION OF DISTILLER'S BOOK.
   In the absence of a request for a bill of particulars a count in the indictment is perfectly good which does not set forth the exact entries alleged to be false and the title of the book prescribed by the Commissioner of Internal Revenue.
3. SPECIAL PLEA, WHEN BAD—FORFEITURE NO BAR TO PROSECUTION.
   A special plea is bad which alleges that the distillery was forfeited upon a libel of information charging the same offenses as those alleged in the indictment; forfeiture of distillery property in a civil proceeding no bar to the prosecution of owner for the personal crime committed by him.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1913.

The appended decision of the United States Circuit Court of Appeals for the Fourth Circuit, in the case of Clarence B. Wood, John M. Rhea, and Luther W. Williams *v.* United States, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT. No. 1129.

Clarence B. Wood, John M. Rhea, and Luther W. Williams, plaintiffs in error, v. *United States, defendant in error.*

IN ERROR to the District Court of the United States for the Eastern District of Virginia.

[Argued December 13, 1912. Decided February 13, 1913.]

[Judgment affirmed.]

Before GOFF and PRITCHARD, Circuit Judges, and ROSE, District Judge.

ROSE, *District Judge:* The plaintiffs in error were the defendants below. They will be referred to as such. An indictment of 16 counts was returned against them

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and others. They demurred to each count. The demurrer was overruled. They here say that it should have been sustained. As they were convicted on the first and sixteenth counts only, it is unnecessary to consider the sufficiency of any of the others.

The first charged that on certain named dates at a specified locality in the district they unlawfully did engage in and carry on the business of distillers with intent to defraud the United States of the tax on a part of the spirits distilled by them.

The sixteenth alleged that they on certain named dates at a specified place were persons who made and distilled spirits and had a particular described still under their superintendence, and that "unlawfully and with intent to defraud the United States did make certain false entries in the book required to be kept by them as such distillers under the provisions of section 3303 of the Revised Statutes of the United States, to wit, Form 13—that is to say, did make entries of the quantity of grain and other material used for the production of spirits and the number of gallons of spirits distilled greatly below the true and exact quantity of grain and other materials so used and the number of gallons of spirits so distilled."

The offense charged in each of these counts may be punished by imprisonment for more than a year. Defendants argue that it is therefore made a felony by section 335 of the Penal Code.

Neither count alleges that what is therein charged was feloniously done. The omission is said to be fatal to the validity of the counts. The Government asserts that the above provision of the Penal Code has no application to breaches of the internal-revenue laws. We do not find it necessary here to decide whether it has or has not.

More than sixty years ago, in United States *v.* Staats (8 How., 41), it was ruled that where a crime is made a felony by statute it is not necessary to charge that it was feloniously committed unless the statute itself makes a felonious intent an element of the offense.

Defendants say the sixteenth count was bad because it did not set forth the exact entries alleged to be false, nor give a description of such entries sufficient to bar future prosecutions for the same offense, nor did it allege that the book in which the entries were made was one prescribed by the Commissioner of Internal Revenue.

We are of opinion that the description of the entries was sufficient, in the absence of any request by the defendants for a bill of particulars, and that the statement that the book in which the entries were made was a book required to be kept by them as such distillers under the provisions of section 3303, Revised Statutes of the United States, to wit, Form 13, was all that was necessary to show that it was a book which such section required to be kept and the making of false entries in which with intent to defraud or conceal is by section 3305 made an offense.

The demurrers to these counts of the indictment were rightly overruled.

Wood, one of the defendants, filed a special plea in his own behalf. By it he alleged that while the distillery in connection with which the frauds charged against him were said to have been committed stood in the name of the Broad Rock Distilling Co. (Incorporated), he was the president, the sole owner, and the sole stockholder of such company and therefore sole owner of such distillery, and that upon a libel of information against such distillery filed by the Government and charging the same offenses as those alleged in the indictment the distillery had been forfeited to the Government.

The United States demurred to this plea. The demurrer was sustained. There was no error in so doing. The plea was bad, and that for two reasons. If a man for his own convenience chooses to conduct any business through a corporation he is estopped to say that he and the corporation are one person and not two. He may not obtain for himself the limitation of liability and the other advantages which flow from the conduct of the business by the corporation, and then when it suits him say that there is no difference between him and the corporation.

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For the purposes of this case it is immaterial whether Wood owned one share of the corporate stock or all of it. If the forfeiture of the corporate property was a punishment of the stockholder whose interest in the property was thereby taken from him, the holder of one share was punished as well as the holder of all, although the extent of the punishment might differ. Stockholders, innocent or guilty of any personal participation or knowledge of the crime, suffer alike from the forfeiture of the corporate property. It certainly can not be contended that innocent or guilty they are equally immune from other punishment.

There are many statutes which impose criminal penalties upon both corporate and individual offenders—as, for example, a railroad company which gives a rebate and the officer or agent who actually and knowingly conducts the transaction are made equally guilty. Accordingly, to the contention of the defendant Wood, an officer or agent of a railroad corporation which had paid a fine for allowing a rebate could not be punished for so doing if he happened to be a stockholder in the corporation, but could if he were not.

Secondly, even if Wood had been the owner in his own name of the distillery property, its forfeiture in a civil proceeding in consequence of its having been used by him to defraud the Government would have been no bar to his prosecution for the personal crime committed by him. Origet *v.* United States (125 U. S., 240).

The court refused a severance asked for by the defendants. They assign error therein. Whether a severance shall or shall not be granted is a matter lying in the sound discretion of the trial court. United States *v.* Ball (163 U. S., 672).

In this case there was no abuse of such discretion.

There are a number of assignments of error based upon the admission or rejection of testimony. We have considered each of them. We do not find merit in any of them

The defendants say that the jury should have been instructed to acquit them because there was no evidence that they carried on the business of distillers, as charged in the first count, nor that they were persons who had a still under their superintendence, as charged in the sixteenth. Wood was the president of the company which owned and operated the distillery. Williams was the man who actually did the distilling. Rhea was the man to whom the whisky which had not paid the tax was delivered and by whom it was sold. A corporation can only act through human agencies. If the persons who actually direct and commit the frauds upon the Government are not distillers or persons having superintendence of a still, as charged in the counts of the indictment under consideration, no one can ever be in those cases in which the distillery belongs to and is operated by a corporation. Speaking with precise technical accuracy, it may be said that what happened was that the corporation committed these offenses and that the defendants and each of them knowingly, willfully, and actively aided, abetted, and procured their commission. There is abundant evidence in the record from which the jury might find that that was precisely what these defendants did. If so, by the express language of section 332 of the Penal Code they became principal offenders and were properly indictable and punishable as such.

Defendants also assign error to the action of the court in giving and refusing to give instructions to the jury.

We do not perceive that any prejudicial error was made. As usual in such cases, particular instructions are criticised because they do not themselves contain all the applicable law of the case, and complaint is made that the court did not give some possibly correct instruction in the very language in which defendants asked for it. In our opinion, the instructions which were given as a whole accurately and fully stated the law of the case and substantially embodied everything for which defendants had rightfully asked. Nor were any of the instructions so worded as to make it at all likely that the jury could have been in anywise misled by them.

It follows that the judgment below must be *affirmed*.

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(T. D. 1837.)

Evidence in civil proceedings—Court decision.

1. AN IN REM SUIT IS A CIVIL PROCEEDING.

An information in rem for the forfeiture of distillery property is not a criminal prosecution.

2. NO ERROR TO INSTRUCT JURY THAT THEY NEED NOT BE SATISFIED BEYOND REASONABLE DOUBT.

To prove an allegation in civil proceedings the preponderance of evidence is sufficient—that is, in order to return a verdict for the United States, the jury must have that quantum and character of testimony which by its preponderance satisfies their minds that the allegation is true.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1913.

The appended decision of the United States Circuit Court of Appeals for the Fourth Circuit, in the case of Grain Distillery No. 8 of the Eastern Distillery Co. *v.* United States, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT. No. 1127.

Grain Distillery No. 8 of the Eastern Distillery Co., plaintiff in error, v. *United States, defendant in error.*

IN ERROR to the District Court of the United States for the Eastern District of Virginia, at Norfolk.

[Argued December 12, 1912. Decided February 17, 1913.]

[Judgment affirmed.]

Before GOFF, Circuit Judge, and ROSE, District Judge.

GOFF, *Circuit Judge:* The writ of error we are now to dispose of is prosecuted by the defendant below to a judgment rendered on the verdict of a jury, by which said defendant's property was condemned as forfeited to the United States. The information alleged that such property had been duly seized by the collector of internal revenue, on the ground that the same had been forfeited for the reason that the defendant, being engaged in the business of a distiller, did unlawfully attempt to defraud the United States of the internal-revenue tax on the spirits distilled by it; that it unlawfully engaged in carrying on the business of a distiller with intent to defraud the United States of the internal-revenue tax on spirits, and did attempt to defraud the United States of said tax in that it omitted to make true and exact entries of the quantities of grain and other materials used by it, as required by section 3303 of the Revised Statutes of the United States.

To this information an answer was filed by the defendant denying all the allegations of defrauding or attempting to defraud the United States as set forth in the information. A trial by a jury was had, the verdict being:

We, the jury, on the issue joined, find for the United States Government.

On this verdict judgment of forfeiture was entered and a writ of error granted.

The assignment of error relied on by the plaintiff in error relates to an instruction given to the jury by the court below, which was in these words:

That the same degree of proof is not required in order to the finding of a verdict for the Government in the present case as in the case of a criminal prosecution; that

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is to say, while the jury, in order to find for the Government, must be satisfied from the evidence that the offense or offenses charged in the information has or have been committed as charged, they need not be so satisfied beyond a reasonable doubt. A preponderance of evidence is sufficient.

The contention of the plaintiff in error is that the proceeding in the court below was a criminal prosecution and that consequently it was error to charge the jury that a preponderance of evidence was sufficient; that the rule in criminal cases requiring guilt to be proved beyond a reasonable doubt was applicable and should have been given to the jury.

It may be conceded that some years ago there was a variance in the decisions of the courts relating to this matter, but all doubts concerning it were, so far as the courts of the United States are concerned, dissolved by the decision of the Supreme Court in Lilienthal's Tobacco *v.* United States (97 U. S., 237). We quote from that case (pp. 266 and 267):

In criminal cases the true rule is that the burden of proof never shifts; that in all cases, before a conviction can be had, the jury must be satisfied from the evidence, beyond a reasonable doubt, of the affirmative of the issue presented in the accusation that the defendant is guilty in the manner and form as charged in the indictment. * * * In civil cases their duty is to weigh the evidence carefully and to find for the party in whose favor it preponderates. * * * Authorities to show that the case before the court is a civil case are scarcely necessary, but if any be needed they are at hand. 1 Bishop, Cr. Law (6th ed.), sec. 835; United States *v.* Three Tons of Coal (6 Bim., 371); Schmidt *v.* Insurance Co. (1 Gray (Mass.), 533); Knowles *v.* Scribner (57 Me., 497).

In the case of Boxes of Opium *v.* United States (23 Fed., 395), which was an information *in rem* for the forfeiture of certain boxes of opium alleged to have been smuggled into the port of San Francisco in violation of the customs law of the United States, it was insisted during the trial that the evidence necessary was the same as would be required in a criminal case, but in the disposition of the case the court held otherwise. Referring to the Lilienthal Tobacco case, *supra*, Judge Sawyer said:

I regard this case as giving the last expression of the views of the Supreme Court and as controlling in this court in this case; also as adopting, in a civil case in form, by information against the goods to enforce a forfeiture, notwithstanding it is essentially criminal and intended to punish a crime, the ordinary rule that a mere preponderance of evidence should determine the finding of a court or the verdict of a jury. * * * For the purposes of this case, therefore, in accordance with what I conceive to be the authoritative rule laid down by the Supreme Court in its latest decisions, I shall apply the rule in ordinary civil cases, that a mere preponderance of evidence in favor of guilt must determine the controlling question of fact as to whether the opium was smuggled into San Francisco on the *Tokio* or not.

In the case of United States *v.* One Distillery (193 Fed., 720), Judge Boyd, when instructing the jury, said:

The United States has alleged that Foster, or his agents, or his employees, no matter which, during the operation of this distillery by him, operated it, intending at the time of the operation to defraud the Government of the United States of the tax upon the product of the distillery or a part of it. The Government having made that allegation, the burden rests upon it to prove it, not beyond a reasonable doubt, but by the weight of the testimony; that is, in order to return a verdict for the United States, the jury must have that quantum and character of testimony which by its preponderance satisfies their minds that the allegation is true.

We do not find it necessary to further consider cases bearing upon this question, but we will refer to some of them as illustrative of the principles involved. Hawkeets *v.* Kass (25 Fed., 765), United States *v.* Shapleigh (54 Fed., 126), *The Good Templar* (97 Fed., 651), United States *v.* Brown (24 Fed. Cas., p. 1248), Coffey *v.* United States (116 U. S., 436).

The judgment complained of is without error.

Affirmed.

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(T. D. 1838.)

Abatement or refunding of special excise penalty taxes on corporations under certain conditions.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 11, 1913.

The act of Congress approved March 3, 1913, provides that—

Any corporation, joint-stock company, association, or any insurance company subject to the special excise tax provided by section thirty-eight of the act of August fifth, nineteen hundred and nine, known as the special excise corporation-tax law, which has been or may be compelled to pay or become liable for any additional tax within the provisions of subsection five of said section thirty-eight, which additional tax has been or may hereafter be imposed for a neglect to file a return as provided in said corporation-tax law on or before the first of March of any year, may, within one year after the passage of this act, or within one year after the date of notice of assessment where such notice is given after the passage of this act, make application to the Commissioner of Internal Revenue for a refund of such additional tax. And the Commissioner of Internal Revenue, with the advice and consent of the Solicitor of Internal Revenue, is hereby directed to remit, abate, or pay back all such additional taxes in excess of $100 for any single year whenever in any case it appears to his satisfaction that the additional tax was assessed or imposed solely because of a neglect to make a return at the time or times specified in said act, and without any intention or design on the part of any officer of such corporation, joint-stock company, association, or insurance company to hinder or delay the United States in the collection of the tax originally assessed.

Claims for abatement or refunding under the provisions of the foregoing act shall be made on Forms 47 or 46, respectively, executed in the usual manner and filed with the collector of the district in which the claimant was assessed or paid its tax, to be by him entered on his record and certified to the Commissioner of Internal Revenue. Such claims should be accompanied by an affidavit of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, stating specifically that the neglect to make the annual return of the claimant at the time required by law was without any intention or design on the part of any officer of such claimant to hinder or delay the United States in the collection of the tax originally assessed, and setting forth in detail the cause or causes which produced the delay in filing the said annual return in the time and manner prescribed by law.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1839.)

Webb liquor law.

The "Act divesting intoxicating liquors of their interstate character in certain cases" not required to be enforced through the Office of Commissioner of Internal Revenue.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 10, 1913.

GENTLEMEN: In reply to your letter of the 6th instant, you are informed that the Webb liquor bill, entitled "An act divesting

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intoxicating liquors of their interstate character in certain cases," was passed on the 1st instant over the President's veto in the House, having previously passed the Senate over the veto, and is now a law. This law, however, is not required to be enforced by this bureau. Questions relating to the effect or enforcement of its provisions should be addressed to the United States attorney for your district.

Respectfully, ROYAL E. CABELL, *Commissioner*.

Messrs. ——— ———

(T. D. 1840.)

Distillery beer and slop.

Directions for taking gravity of distillery beer and slop.—Revision of T. D. 1750, of January 19, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1913.

To collectors of internal revenue:

The following instructions are for storekeeper-gaugers in determining the gravity of mash, beer, and slop. It is suggested that each officer place a copy in his bulletin on distilled spirits.

METHOD OF DETERMINING GRAVITY.

All mashes, beers, and slops are to be strained through a fine sieve or cheesecloth before making the determinations.

All mashes where 1 bushel of meal represents 45 gallons and less of beer are to be diluted with water, 1 to 1, *after straining*. After the beer is 24 hours old it is not to be diluted before making the determination.

The temperature of the *determination* is to be recorded in each case in the proper column.

Gravity is to be read to per cents and tenths.

Decimals are to be used in place of fractions.

Actual figures are to be recorded in each case; ditto marks are not to be used. *Gravity is not to be corrected for temperature.*

Slop.—Where slop is used in making a mash or is added to a fermenter, entry is to be made on page 1 of Form 88 and on Record 17. A sample of the slop should be taken and cooled to ordinary temperature, strained, and diluted with water, 1 to 1, before making the determination.

Where dilution of slop and mashes is made as herein directed, the gravity of the diluted samples is to be multiplied by 2 before making entry on Form 88 and Record 17.

Distillers are to be required to furnish, at their own expense, accurate stems graduated to tenths, vessels in which to take the samples, sieves, and a cylinder or cup to hold the strained samples. (Rev. Stat., 3249–3303.)

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For the information of officers who wish to calculate the yield, the following table of corrections for temperature is given:

Temperature corrections to saccharometer readings—Standard at 60° F.

[Calculated by Bureau of Standards, Mar. 5, 1912.]

Observed temperature in degrees Fahrenheit.	Observed per cent of sugar.				
	0	5	10	15	20
	Subtract from observed per cent.				
32	0.1	0.3	0.4	0.5	0.6
34	.1	.3	.4	.5	.6
36	.2	.3	.4	.5	.6
38	.2	.3	.4	.5	.5
40	.2	.3	.4	.4	.5
42	.2	.3	.3	.4	.4
44	.2	.2	.3	.4	.4
46	.2	.2	.3	.3	.4
48	.2	.2	.2	.3	.3
50	.1	.2	.2	.2	.3
52	.1	.1	.2	.2	.2
54	.1	.1	.1	.1	.2
56	.1	.1	.1	.1	.1
58	.0	.0	.0	.0	.1
60	.0	.0	.0	.0	.0
	Add to observed per cent.				
62	0.0	0.0	0.0	0.0	0.1
64	.1	.1	.1	.1	.1
66	.1	.1	.2	.2	.2
68	.2	.2	.2	.2	.3
70	.2	.3	.3	3	.3
72	.3	.3	.3	.4	.4
74	.4	.4	.4	.4	.5
76	.4	.4	.5	.5	.5
78	.5	.5	.5	.6	.6
80	.6	.6	.6	.6	.7
82	.6	.7	.7	.7	.8
84	.7	.7	.8	.8	.9
86	.8	.8	.8	.9	.9
88	.9	.9	.9	1.0	1.0
90	1.0	1.0	1.0	1.1	1.1
92	1.0	1.1	1.1	1.2	1.2
94	1.1	1.2	1.2	1.2	1.3
96	1.2	1.3	1.3	1.3	1.4
98	1.3	1.3	1.4	1.4	1.5
100	1.4	1.4	1.5	1.5	1.6
102	1.5	1.5	1.6	1.6	1.7
104	1.6	1.6	1.7	1.7	1.8
106	1.7	1.7	1.8	1.8	1.9
108	1.8	1.8	1.9	1.9	2.0
110	1.9	1.9	2.0	2.0	2.1

Respectfully,

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1841.)

Liens.

Instructions relating to filing notices of liens for taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 18, 1913.

To collectors of internal revenue:

The act of March 4, 1913, entitled "An act to amend section thirty-one hundred and eighty-six of the Revised Statutes of the United States," amended said section so that it reads as follows:

[Public No. 451—H. R. 25780.]

AN ACT To amend section thirty-one hundred and eighty-six of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section thirty-one hundred and eighty-six of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 3186. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however*, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further*, Whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated."

Approved, March 4, 1913.

Pursuant to the statute and to validate liens for taxes assessed, collectors are instructed to file notices of such liens in the office of the proper clerk of the United States District Court or in the office of the proper registrar or recorder of deeds where the State law authorizes such filing, when deemed advisable in order to protect the interests of the Government.

Collectors will file notice of the lien under said section in all cases of assessments now outstanding or hereafter made where the collector apprehends that attempt will be made to defeat collection by transfer of property or placing encumbrance thereon, or where from the size

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of the assessment or for any other reason the collector is of the opinion that such action is advisable to protect the Government.

Notice of the lien should be sent as soon as practicable after the assessment list has been received by the collector. In doubtful cases, where large sums are involved, an additional notice on Form 668 should be filed with the clerk or registrar 10 days after the notice and demand on Form 17, required by section 3184, Revised Statutes, has been served and the tax remains unpaid. When the tax has been paid notice should in like manner be filed, showing satisfaction of the claim and removal of lien.

Notice of the lien will be given on Form 668 and notice of discharge of lien on Form 669, which forms will be furnished on requisition when received from the printer.

There will be no expense incurred where the notice of lien is filed with the clerk of the Federal court. If it is necessary to pay any fee in other cases, collectors will be authorized to incur the expense upon application to this office, proper vouchers to be procured upon payment.

Every collector will notify this office of any provision of State legislation now in force, or which may be hereafter enacted, authorizing the filing of such notices in the office of the registrar or recorder of deeds, as stated in the law (sec. 3186, R. S., as amended).

ROYAL E. CABELL, *Commissioner.*

(T. D. 1842.)

Denatured alcohol.

Use of special formula No. 19 extended to the preparation of collodion backings for gelatin films.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 26, 1913.

SIR: This office is in receipt of an application from ——— requesting permission to use specially denatured alcohol formula No. 19 (to 100 gallons of ethyl alcohol add 100 gallons of ethyl ether) in the preparation of a collodion backing for gelatin films.

The use of alcohol denatured under said formula No. 19 is hereby authorized for use as above indicated.

Respectfully,

ROYAL E. CABELL,
Commissioner.

COLLECTOR THIRD DISTRICT, *New York.*

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(T. D. 1843.)

Defining standards for determining special-tax liability.

A compilation of the various rulings and decisions defining the standards used in determining special-tax liability of manufacturers of and dealers in flavoring extracts, soda-water sirups, etc., containing alcohol and alcoholic compounds containing medicinal ingredients.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 27, 1913.

To collectors of internal revenue, internal-revenue agents, and others concerned:

This office has received numerous inquiries from which it appears that there is more or less confusion existing in the minds of manufacturers of and dealers in flavoring extracts, soda-water sirups, etc., containing alcohol and alcoholic compounds containing drugs or medicines as to the standards adopted by the Bureau of Internal Revenue for the purpose of determining whether such manufacturers and dealers are liable to or exempt from internal-revenue special taxes on account of the manufacture or sale of their respective preparations. It appears, therefore, advisable to restate in one decision the substance of the various rulings now in force and effect on this subject.

The decisions heretofore issued on this subject are T. D. 1251, T. D. 1255 (Circular 707), T. D. 1358, T. D. 1514, T. D. 1599 (Rock, rye, and glycerine), and the various lists of preparations for the sale of which special tax is required, the latest amended list having been published as T. D. 1794.

Section 3246, Revised Statutes, exempts apothecaries from the payment of special tax "as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines." Under this section it was held in T. D. 1251 that, while special tax as a rectifier is required for the compounding of alcoholic beverages, no such liability is incurred through the manufacture of bona fide alcoholic medicinal compounds; and, under the authority of Allen *v.* Liquid Carbonic Co. (170 Fed., 315), that no special-tax liability is incurred on account of the manufacture or sale of essences, extracts, and soft-drink sirups which contain no more alcohol than is necessary to cut the oils or extract the desired active principles and hold them in solution, provided such products are nonpotable in the condition as put out by the manufacturer.

In order for a manufacturer or a dealer to be exempt under the provisions of section 3246, Revised Statutes, from special-tax liability on account of the manufacture or sale of an alcoholic compound containing drugs or medicines the preparation must conform to the following standard:

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First. Alcohol: The preparation must contain no more alcohol than is necessary for the legitimate purposes of extraction, solution, or preservation.

Second. Medicaments: As the minimum dosage each 1 ounce liquid of the completed preparation must carry in it approximately an average U. S. P. dose for an adult of some drug or drugs of recognized therapeutic value, either singly or in compatible combination.

For the manufacture or sale of preparations conforming to this standard the special tax of a rectifier or retail dealer is not required so long as the preparation is sold for genuine medicinal purposes. It should be remembered, however, that even though a compound conforms to this standard in its ingredients, as U. S. P. Jamaica ginger, for example, or other similar compounds, the sale thereof for beverage purposes or under circumstances from which the seller could readily deduce an intention to use it as a beverage, would involve the seller in special-tax liability as a liquor dealer. See United States *v.* Starnes (37 Fed., 665).

Manufacturers using a formula which calls for drugs sufficient to conform to the standard herein should be very careful to see that the ingredients and processes used are such that the full strength called for by the formula is present in the product. The standard contained herein sets forth the maximum amount of alcohol and the minimum amount of medicinal ingredients necessary to change the alcohol to such an extent as to relieve the dealer from special-tax liability. A common case of manufacturers incurring liability through failure to exercise this care is found in various beef, iron and wine compounds. The standard of this office (see T. D. 1358), based upon the formula on page 1821, 19th edition of the United States Dispensatory, is 1.4 per cent of proteids and 0.2 per cent of iron. Many samples of beef, iron, and wine received in this office are markedly deficient in proteids, the claim being made after liability is asserted that the Dispensatory formula was followed, but that the beef extract must have been of a low quality, which circumstance, of course, does not relieve the manufacturer from tax liability.

Apothecaries are permitted, under the exempting provision of section 3246, Revised Statutes, to carry in stock distilled spirits and wines and to use same in the preparation of tinctures and other U. S. P. preparations, and in the compounding of bona fide prescriptions, and no special tax is required for the sale thereof, provided the spirits or wine is compounded prior to sale with drugs sufficient in character and amount to so change the character of the alcohol as to render it unsuitable for use as a beverage. The sale, however, of spirituous liquors or wines not compounded as above indicated, even on a physician's prescription and for purely medicinal purposes renders the person making such sale liable to internal revenue special tax.

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In the same way the sale of alcohol for bathing purposes, even on a physician's prescription, renders the person making the sale liable to internal revenue special tax. If, however, the alcohol before sale is rendered by the apothecary unfit for beverage uses in accordance with any formula approved for destruction of identity of alcohol in scientific institutions in hospital departments (see T. D. 1757), no tax liability will be incurred, but the burden of clearly proving this is on the person making the sale. In general, exemption from liability to special tax, on account of filling physicians' prescriptions, is secured to apothecaries by having the prescription itself specify the precise nature and amount of the ingredients to be added to the compound, with the result that the compound thus prepared is rendered, as above indicated, unfit for beverage purposes.

ROYAL E. CABELL, *Commissioner.*

(T. D. 1844.)

Franking of fourth-class official mail matter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 31, 1913.

To collectors of internal revenue, revenue agents, and others concerned:

The following order issued by the honorable Secretary of the Treasury on March 19, relative to the franking of fourth-class official mail matter, is published for your information and guidance:

To officers and employees of the Treasury Department.

The attention of all concerned is invited to a ruling of the Post Office Department to the effect that it is permissible under the law for an executive department or an officer of the Government to send in the mails, free of postage, under a penalty envelope or label, official matter partaking of the characteristics of "fourth-class mail matter," not exceeding 11 pounds in weight.

The act of August 24, 1912, known as the parcel-post law, provides that—

Fourth-class mail matter shall embrace all other matter, including farm and factory products, not now embraced by law in either the first, second, or third class, not exceeding eleven pounds in weight, nor greater in size than seventy-two inches in length and girth combined, nor in form or kind likely to injure the person of any postal employee or damage the mail equipment or other mail matter and not of a character perishable within a period reasonably required for transportation and delivery.

All officers and employees are directed to observe the foregoing ruling in dispatching mail for this department.

W. G. MCADOO, *Secretary.*

The provisions of the last paragraph of T. D. 1781, dated June 22, 1912, are hereby modified to require the shipment of locks and keys for locks for tank cars by registered mail instead of by express.

ROYAL E. CABELL, *Commissioner.*

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(T. D. 1845.)

Withdrawal of oleomargarine, etc., free of tax.

Regulations governing the withdrawal of oleomargarine, etc., from factories free of tax under provisions of section 3464, Revised Statutes.

TREASURY DEPARTMENT, *March 24, 1913.*

Section 3464 of the Revised Statutes of the United States provides:

The privilege of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which now does or hereafter shall exist by provision of law, shall be extended under such regulations as the Secretary may prescribe to all articles of domestic production which are subject to tax by the provisions of this title. (Title XXXV, Int. Rev.)

Under the authority of the above section of law, the following regulations are prescribed for the withdrawal of oleomargarine, etc., from factories free of tax for uses of the United States as supplies.

ARTICLE I. Where contracts have been entered into for the purchase of oleomargarine or articles for use of the United States Government, application for the withdrawal thereof from factory, free of tax, will hereafter be made by the head of the department or head of the bureau, if not under the control of any department, for which such articles are purchased, on Form 664 to the Secretary of the Treasury, and the quantity of the articles to be so withdrawn must be definitely stated in the application and the character and number of packages in which packed set forth in the application.

ARTICLE II. If the oleomargarine or other articles are purchased for use of the United States under contracts which require deliveries from time to time in such quantities as may be desired, requisition will be made on the following form:

FORM NO. 663.

Requisition No. ——.
Contract No. ——.

Requisition for withdrawal of ———, free of tax, under the provisions of section 3464, Revised Statutes, for the use of the United States.

——— DEPARTMENT,
———, 191–.

To the SECRETARY OF THE TREASURY:

Requisition is hereby made under the provisions of section 3464, Revised Statutes, for —— pounds of ———, now in factory of ——— or to be hereafter manufactured by ——— at ——— and to be withdrawn therefrom, free of tax, at such times and in such quantities as occasion may require.

The ——— above specified ha— been purchased or contracted for by the department for the use of the United States at a price not including the tax thereon, or any part thereof, and is to be delivered to ——— or either of them for shipment to ——— at ———.

———,
Secretary of the —— Department.

ARTICLE III. After such requisition has been filed, applications for the withdrawal of the product in specific lots may be made by the officer

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to whom the goods are to be delivered or the manufacturer named in the requisition. If the transportation or delivery bond has been given as hereinafter provided, application thereunder may be filed directly with the Commissioner of Internal Revenue; otherwise the application in each case should be filed with the collector in the district in which the manufactory is located, together with the required bond on Form 665, in duplicate. Upon approval of the bond, the collector will at once forward the duplicate, with the application, to the commissioner. The application in either case will be in the following form:

FORM NO. 664.

Requisition No. ——.
Contract No. ——.

Application for withdrawal of ———, free of tax, under the provisions of section 3464, Revised Statutes, for the use of the United States.

———— ————,
————, 191–.

To the SECRETARY OF THE TREASURY:

Pursuant to a requisition heretofore made by the Secretary of ——— Department, under the provisions of section 3464, Revised Statutes, application is hereby made for the withdrawal from the factory No. ——, of ———, in the —— district of ———, free of tax, of the following described ———, now manufactured or to be manufactured in said factory on or about the —— day of ———, 191–.

Number of original packages.	Number of subdivision packages in each original package.	Total quantity in taxable pounds.	Rate and amount of tax remitted.
.....	.....	.....	.....

The above described ——— are intended for the use of the United States, and will be consigned to ———, at ———.

———— ————.

ARTICLE IV. After receipt of application in either case heretofore referred to, permits in duplicate for the withdrawal of the product described in the application will be issued on Form No. 666, the original of which will be forwarded to the collector of the district in which is located the factory from which the product is to be withdrawn and the duplicate to the department making the application for withdrawal. The duplicate of said permit, after the receipt on the reverse side thereof has been signed by the head of the department or the independent bureau, or by the principal to the transportation and delivery bond, will be forwarded directly to the officer, manufacturer, or other party to whom the product is to be delivered.

ARTICLE V. Upon receipt of the original permit, and before the delivery of the product to the designated person, the collector will require of the manufacturer a transportation and delivery bond, in duplicate, with satisfactory sureties, and in a penal sum of not less than the tax on the product to be withdrawn. If this bond is intended

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to cover a specific lot it may be made on Form 665, so amended as to cover single withdrawal and delivery. If the bond is intended to cover the product deliverable at various times, and in such quantities as may be ordered by the department for which the same is intended, the parties contracting to deliver such product may execute a continuing transportation and delivery bond, in duplicate, on the following form:

BOND FORM NO. 665.

For the transportation and delivery of ——— from bonded factories under provisions of section 3464, Revised Statutes.

Know all men by these presents, that we, ——— ———, of ———, as principal, and ——— ———, of ———, and ——— ———, of ———, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of ——— thousand dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this —— day of ———, 191–.

Whereas the above bounden principal has sold or agreed to deliver to the United States certain ——— now in the factory or to be hereafter manufactured in the factory of ———, in the —— collection district of ———, to wit, ———, which ——— are to be withdrawn from said factory free of tax, under permits to be issued by the Secretary of the Treasury, pursuant to the provisions of section 3464 of the Revised Statutes of the United States.

Now, therefore, the condition of this obligation is such that if the above bounden principal shall, as to all such ——— so sold and as to all such ——— hereafter so sold and withdrawn from said factory, safely deliver the same, or cause the same to be delivered, to the person or persons, and at the place or places designated in said permits, and shall, as to each lot of ——— so withdrawn and within 30 days from the date of each such withdrawal furnish to the collector of internal revenue of the district aforesaid the evidence prescribed by the Secretary of the Treasury, showing the due delivery of such ——— to the person or officer so designated in the permit for withdrawal, and shall on demand well and truly pay, or cause to be paid, to the said collector the tax on all such ——— so withdrawn as aforesaid and not so delivered, then this obligation to be void, otherwise to remain in full force and virtue. And it is hereby expressly stipulated and agreed that this obligation shall extend to and include all ——— receipted for by the above bounden principal or his agent, on the permits so issued for the withdrawal of such ——— from said factory.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.
——— ———.

ARTICLE VI. Where deliveries are to be made at the manufactory to designated agents of the Government, no bond will be required, such withdrawals and deliveries being under the manufacturer's bond. However, a receipt by the receiving officer as hereinafter provided covering goods withdrawn and delivered under transportation and delivery bond, must be filed covering all such deliveries at the factory.

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ARTICLE VII. In case goods are to be transported by a common carrier the manufacturer will file with the collector a duplicate bill of lading covering articles from the point of shipment to the final destination, which will be filed by him with the copy of the bond in his office, together with the final receipt of the Government agent after the delivery of the goods, and will constitute the evidence upon which the bond is credited.

ARTICLE VIII. All products withdrawn either under transportation and delivery bond or the manufacturer's bond will remain as an outstanding charge against the respective bond until a certificate from the Government receiving officer is filed showing actual receipt of the goods. This receipt should be on Form 667, as follows:

FORM NO. 667.

Certificate of receipt of ———, withdrawn from bond, free of tax, under section 3464, Revised Statutes, for the use of the United States.

——— ———, 191–.

I hereby certify that the following-described packages of ———, withdrawn from the factory of ———, in the ——— district of ———, on or about the ——— day of ———, 191–, and consigned by ———, have been duly received by me, and that on inspection the same are found to contain the quantity below stated:

Number of original packages.	Number of subdivision packages in each original package.	Total quantity in taxable pounds.	Rate and amount of tax remitted.
.....	.....	.....	.....

——— ———,

———.

Approved:

——— ———.[1]

Where there is a loss in transit of goods covered by transportation or delivery bond, this receipt should specify the number of original packages, the number of subdivisions, if so packed, and the total number of pounds so lost. The amount reported lost or any difference between the quantity withdrawn under application will remain as a charge against the transportation bond and assessment of the tax thereon will be certified against the manufacturer in the absence of evidence showing that the goods lost in transit were actually destroyed.

ARTICLE IX. The articles withdrawn from the factory under the provisions of this circular will be reported by the manufacturer in his monthly or annual report under an appropriate heading and carried into the recapitulation as a special credit and the collectors

[1] Unless the certificate is issued by the head of the department or bureau, the same will be approved by that officer.

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will likewise in the same manner report on their statement of account the goods so withdrawn.

ARTICLE X. Any taxable products withdrawn under the provisions of section 3464, Revised Statutes, may be packed in any manner specified in the contract entered into between the Government and the manufacturer, but in the case of oleomargarine, where packed in tins or other subdivisions of less than 10 pounds, these should be inclosed in original packages or shipping containers of not less than 10 pounds.

ARTICLE XI. In cases where samples of taxable articles are desired for the United States free of tax, application therefor should be made on the form prescribed in Article III, which application should fully describe the number of packages and quantity in pounds so desired and bear notation that goods to be withdrawn are for samples. Application for samples should be made direct to the Commissioner of Internal Revenue, who will issue the necessary instructions to the collectors of the districts wherein the manufactories are located to permit the withdrawal of the required number of samples. Duplicate copy of bill of lading if shipment is made by common carrier or receipt from the receiving agent of the Government where the goods are delivered to the Government at the factory must be furnished. Where it is desired that samples be taken under personal supervision of a Government internal-revenue officer, the application should bear a statement to this effect.

W. G. McADOO,
Secretary of the Treasury.

(T. D. 1846.)

Shipment of beverages.

Shipment of beverages, classed as fermented malt liquors, under proprietary names, a violation of section 3449, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 9, 1913.

SIR: This office is in receipt of your letter of the 5th instant relative to the shipment of Hop-O-La and other similar beverages, which have been classified by this office as fermented malt liquors, under a name other than that known to the trade, in violation of section 3449, Revised Statutes.

In reply your attention is called to T. D. 956, which holds that under section 3449, Revised Statutes, the name known to the trade as designating the kind and quality of the contents of a shipment of this character is the statutory name of beer, ale, porter, or fermented

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malt liquor, and that shipment under such trade name as Cream of Hops, etc., without also specifying one of the names given, is a violation of section 3449, Revised Statutes.

You are therefore requested to investigate shipments of any beverages of the character named, and to report to the collector and this office any violations of law found.

Respectfully, ROYAL E. CABELL, *Commissioner.*

REVENUE AGENT, *Richmond, Va.*

(T. D. 1847.)

Special excise tax on corporations—Decision of United States Supreme Court.

1. LEASED RAILROADS.

A railroad corporation, which has leased its property for a term of years and parted with its control and management, but which maintains its corporate organization and collects rentals from the lessee company and distributes the same among its stockholders, is not "engaged in business" within the meaning of the corporation tax act of 1909 and is not liable for taxes thereunder, notwithstanding the lease provides for recovery of the property in case of default.

2. CORPORATIONS OUT OF BUSINESS.

When the corporation owning the property has gone out of business in connection therewith and disqualified itself from any activity in regard to it, there is no liability, the principle being the same as that involved in the case of Zonne *v.* Minneapolis Syndicate (220 U. S., 187), which is held to govern this case'

3. RECEIPT OF INCOME.

The receipt of income by such lessor corporation from invested funds and the distribution thereof among the stockholders, and payment of expenses of maintaining an office, including payment of salaries to officers and employees, does not constitute such a business as is taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 14, 1913.

The appended decision of the United States Supreme Court in the case of McCoach, collector of internal revenue, petitioner, *v.* Minehill & Schuylkill Haven Railroad Co. is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL, *Commissioner.*

SUPREME COURT OF THE UNITED STATES. No. 670. OCTOBER TERM, 1912.

William McCoach, collector of internal revenue, petitioner, v. *Minehill & Schuylkill Haven Railroad Co.*

ON WRIT of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 7, 1913.]

Mr. Justice PITNEY delivered the opinion of the court:

The Minehill & Schuylkill Haven Railroad Co., the respondent herein (called for convenience the Minehill Co.), sued the petitioner, who is collector of internal rev-

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enue at Philadelphia, to recover certain taxes for the years 1909 and 1910 paid under protest by that company under the corporation tax act of 1909. The United States Circuit Court held that the company was not "engaged in business" within the meaning of the act, and that therefore the taxes had been illegally assessed, and rendered judgment for their recovery. (192 Fed., 670.) The Circuit Court of Appeals affirmed the judgment and the case comes here upon certiorari.

The facts appear from the plaintiff's statement of claim and the defendant's affidavit of defense, which latter was overruled as insufficient. They may be summarized as follows: The Minehill Co. was incorporated by an act of the legislature of the State of Pennsylvania approved March 24, 1828 (P. L., 205), for the purpose of constructing and operating a railroad, with appropriate powers, including the power of eminent domain. Under this charter a railroad was built and for many years operated. Under the authority of general acts of the legislature, approved, respectively, April 23, 1861 (P. L., 410), and February 17, 1870 (P. L., 31), the Minehill Co., in the year 1896, leased its entire railroad, with all side tracks, extensions, and appurtenances of every kind, and all rolling stock and personal property of every description in use or adapted for use in, upon, or about the railroad (excepting some property intended to have been described in a schedule annexed to the lease, but which is not described, no such schedule having been annexed), and also "all the rights, powers, franchises (other than the franchise of being a corporation), and privileges which may now, or at any time hereafter during the time hereby demised, be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration, or improvement of the demised premises, or any of them," unto the Philadelphia & Reading Railway Co. for a term of 999 years from January 1, 1897, at a yearly rental of $252,612, that being equivalent to 6 per cent upon the capital stock of the Minehill Co.

The lessee agreed to keep the road in good order and repair, keep it in public use and efficiently operate it and return it to the lessor company at the expiration or other determination of the lease. The Minehill Co. agreed during the term of the lease to maintain its corporate existence and organization and that, when requested by the lessee, it would "put in force and exercise each and every corporate power and do each and every corporate act which the Minehill Co. might now or at any time hereafter lawfully put in force or exercise to enable the railway company (the lessee) to enjoy, avail itself of, and exercise every right, franchise, and privilege in respect of the use, management, maintenance, renewal, extension, etc., of the property demised and of the business to be there carried on."

It was provided that upon default in the payment of the rent reserved or in the performance of certain other covenants the lessor might declare the lease forfeited and reenter and repossess the demised premises. The lease further provided that the lessee might under certain circumstances abandon certain railway lines "whenever it shall be found legally practicable to abandon so much of the said lines of railroad, without working a forfeiture or any impairment of the chartered rights and franchises of the Minehill Co. as to its railroads or any part thereof or without creating any liability on the part of the Minehill Co. or the railway company to the public or the Commonwealth for the nonuser of such portions of the railroad lines." In the event thus provided for the abandoned rails, machinery, etc., are to be sold and the proceeds turned over to the Minehill Co. and the annual rental proportionateiy reduced.

Pursuant to this lease the entire railroad and all property connected therewith was turned over to the Reading Co., and since then has been operated by that company, and the Minehill Co. has not carried on any business in connection with the operation of it. It has, however, maintained its corporate existence and organization by the annual election of a president and board of managers, and this board has annually elected a secretary and treasurer. It receives annually from the Read

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ing Co. the fixed rental called for by the lease and it receives annually sums of money as interest on its bank deposits and also maintains a "contingent fund," from which it receives annual sums as interest or dividends. And it annually pays the ordinary and necessary expenses of maintaining its office and keeping up the activities of its corporate existence, including the payment of salaries to its officers and clerks. It keeps and maintains at its offices stock books for the transfer of its capital stock, and this stock is bought and sold upon the market. The annual income from the contingent fund appears to be about $24,000, its annual payments for State taxes about as much, and its expenditures for corporate maintenance about $5,000.

The corporation tax law (act of Aug. 5, 1909, sec. 38; 36 Stat., ch. 6, pp. 11, 112–117) provides:

> That every corporation * * * organized for profit and having a capital stock represented by shares * * * and engaged in business in any State * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to 1 per centum upon the entire net income over and above $5,000, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations * * * subject to the tax hereby imposed. * * *
>
> Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, * * * received within the year from all sources (first), all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property * * *

In Flint *v.* Stone Tracy Co. (220 U. S., 107) the question of the constitutionality of this act was presented here for decision. Upon the preliminary question of interpretation the court said (p. 145):

> It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof, in a sum equivalent to 1 per centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business, with the advantages which inhere in the peculiarities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of corporate organization it may be described generally as a tax upon the doing of business in a corporate capacity. * * * The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint-stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source.

In discussing the constitutional question reference was first made to the case of Pollock *v.* Farmers Loan & Trust Co. (157 U. S., 429; 158 U. S., 601), which held the income-tax provisions of the act of August 15, 1894 (28 Stat., ch. 349, pp. 509, 553, sec. 27, etc.) to be unconstitutional because amounting to a direct tax within the meaning of the Constitution, and because not apportioned according to population, as required by that instrument. Attention was called (220 U. S., 148) to the expressions used by Mr. Chief Justice Fuller, speaking for the court in the Pollock case, upon the rehearing, as to the distinction between a tax upon the income derived from real estate and from invested personal property on the one hand and an excise tax upon business privileges, employments, and vocations upon the other. Reference was also made to the interpretation put upon the decision in the Pollock case in Knowlton *v.* Moore (178 U. S., 41, 80) and in Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397),

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and it was held that the corporation-tax law of 1909 "does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under Article I, section 8, clause 1 of the Constitution and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States."

In applying this principle to the several cases then *sub judice*—in some of which the validity of the tax was challenged by the stockholders of certain real-estate companies whose business was principally the holding and management of real estate—the court dealt, among others (220 U. S., 170), with the Park Realty Co., organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, apartment houses, etc.; to make and carry out contracts in the manner specified concerning buildings * * * and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc. At the time the bill was filed in that case the business of the Park Realty Co. related only to the management and leasing of one hotel. Others of the realty companies that were before the court were engaged in more extensive business transactions. The court held (p. 171):

We think it clear that corporations organized for the purpose of doing business and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute and in the capacity necessary to make such organizations subject to the law.

Another case argued and decided at the same time, but separately reported, is Zonne *v.* Minneapolis Syndicate (220 U. S., 187). In this case the court held that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909, because while originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor, it had afterwards made a lease of all lands belonging to it to certain trustees for a term of 130 years, and then had caused its articles of incorporation, which had been those of a corporation organized for profit, to be so amended as to confine the purpose of the corporation to the ownership of the lands in question, subject to the lease, and "for the convenience of its stockholders to receive and to distribute among them, from time to time, the rentals that accrue under said lease and the proceeds of any disposition of said land." The court said:

The corporation involved in the present case, as originally organized and owning and renting an office building, was doing business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease or the proceeds of any sale of the land if it should be sold. The corporation had practically gone out of business in connection with the property and had disqualified itself by the terms of reorganization from any activity in respect to it.

The precise question presented by the present record is whether the Minehill Co. is "doing business" in the sense in which the realty companies concerned in Flint *v.* Stone Tracy Co. (220 U. S., 107, 170) were doing business, or had gone out of business, in substantially the same sense that the Minneapolis Syndicate had done so.

From the facts as stated above it is entirely clear that the Minehill Co. was not, during the years of 1909 and 1910, engaged at all in the business of maintaining or operating a railroad, which was the prime object of its incorporation. This business, by the lease of 1896, it had turned over to the Reading Co. If that lease had been made without authorization of law, it may be that for some purposes, and possibly for the present purpose, the lessee might be deemed in law the agent of the lessor;

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or at least the lessor held estopped to deny such agency. But the lease was made by the express authority of the State that created the Minehill Co., conferred upon it its franchise, and imposed upon it the correlative public duties. The effect of this legislation and of the lease made thereunder was to constitute the Reading Co. the public agent for the operation of the railroad and to prevent the Minehill Co. from carrying on business in respect of the maintenance and operation of the railroad so long as the lease shall continue. And it is the Reading Co., and not the Minehill Co., that is "doing business" as a railroad company upon the lines covered by the lease and is taxable because of it. The corporation tax law does not contemplate double taxation in respect of the same business.

The Government points out that by the terms of the act the Reading Co. is allowed to deduct from its gross income the $252,612 paid annually to the Minehill Co. for rentals under the lease, with the result that, unless the latter company is held to be "doing business" as a railroad company, both lessor and lessee entirely escape from taxation on $252,612 of income. But an examination of the act shows that this is the precise result intended by Congress:

> Net income shall be ascertained by deducting from the gross amount of the income * * * (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of the property.

The deduction of rentals is not confined to such as are paid to companies that are subject to the tax imposed by the act; and yet the suggestion that it might be so confined was present in the mind of the draftsman, for below there is a provision for deducting "(fifth) all amounts received * * * as dividends upon stock of other corporations * * * subject to the tax hereby imposed." In short, Congress said, and intended to say, as to rentals paid for the use or possession of property and franchises employed by the lessee company in a business taxable under the act, Let there be a deduction by the lessee of the amount of such rentals, whether the lessor is within the reach of the taxing scheme or not.

We conclude that the Minehill Co. was not taxable with respect to the railroad business.

It should be mentioned that there is nothing in the record to show that during the taxing years in question the company exercised its power of eminent domain or put in force any other special corporate power in aid of the business of the lessee. We therefore do not pass upon the question whether, if it should do so, it would be taxable under the act in question. We can not, however, agree with the contention made in behalf of the Government that because the Minehill Co. retains its franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain or other reserved powers, if and when required by the lessee and ready to resume possession of the property at the expiration of the lease it is therefore to be treated as doing business in respect of the railroad within the meaning of the corporation tax law. As to these matters the case is governed by what was said by the court in Flint *v.* Stone Tracy Co. (220 U. S., 145):

> It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof.

And again, page 150:

> The tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed.

There remains to be considered the fact that the Minehill Co. has a considerable amount of personal assets known as its "contingent fund," in the form of investments (the amount and particulars are not specified), from which it derives an annual income

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of about $24,000; that it keeps a deposit in bank, receives and collects interest upon such deposit, and distributes the income thus received, as well as the rentals received from the Reading Co. (after payment of expenses and taxes) to its stockholders in the form of dividends.

In our opinion the mere receipt of income from the property leased (the property being used in business by the lessee and not by the lessor) and the receipt of interest and dividends from invested funds, bank balances, and the like and the distribution thereof among the stockholders of the Minehill Co., amount to no more than receiving the ordinary fruits that arise from the ownership of property. The ground of the decision in the Pollock case was that a tax upon income received from real estate and invested personal property (as distinguished from income received from the transaction of business) was in effect a direct tax upon the property itself, and therefore invalid unless apportioned according to population. In the Flint case, in sustaining the act of 1909 as a tax upon the privilege of doing business in corporate form, against the objection that it includes within its reach the income of real estate and personal property not used in the business and not the subject of taxation, the court said (220 U. S., 163):

The measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable.

And again, after referring to previous decisions (220 U. S., 165):

It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed. * * * The tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the measure of income from all sources does. Nor can it be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods; it may give a standing which shall facilitate purchases; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige.

In short, the inclusion of income derived from property in arriving at the measure of the tax to be imposed with respect to the doing of corporate business was sustained largely because the property not used in the business and the income from such property have a fair relation to the business itself and may contribute materially to its proper and economical conduct. But that reasoning furnishes no support for the contention that the mere receipt of income from property and the payment of organization and administration expenses incidental to the receipt and distribution thereof, constitute such a business as is taxable within the meaning of the act of 1909. The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business, in which event the investment income may be added to the business income in order to arrive at the measure of the tax, and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income, and dividing it among its stockholders. In the former case the tax is payable; in the latter not.

And so upon the whole we think the court below correctly held that the present case is governed by Zonne *v.* Minneapolis Syndicate (220 U. S., 187), and that the taxes under consideration were unlawfully imposed.

Judgment affirmed.

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The following is the dissenting opinion:

Mr. Justice DAY, dissenting: I am unable to concur in the opinion of the majority of the court. It seems to me that, applying the principles laid down in the Corporation Tax Cases (220 U. S., 107), the Minehill & Schuylkill Haven Railroad Co. is a corporation doing business within the meaning of the law and subject to the tax.

We are advised by a brief filed by an *amicus curiæ* that the decision in this case will affect a number of cases now pending, and, owing to its importance as affecting the public revenue, I feel justified in briefly stating the grounds of my dissent.

The corporation tax is imposed under the terms of the law upon every corporation organized for profit having a capital stock represented by shares and engaged in business in any State. Every such corporation is subject to a special excise tax with respect to the carrying on or doing of business equivalent to 1 per cent upon the entire net income over and above $5,000 received by it from all sources during the taxing year. This tax, it was held in 220 U. S., was constitutionally imposed and rests upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint-stock organization. As was said in that case, doing business is a very comprehensive term, embracing about everything in which a person can be employed, and the definition of business as "that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit" was adopted and approved. As is said in the majority opinion, the precise question in this case is, Was the Minehill Co. doing business in the sense in which the term is employed in the law, or had it gone out of business in such substantial sense that it was no longer subject to the law?

I do not care to restate the facts, which are developed fully in the majority opinion. It therein appears that the Minehill Co., while it has leased its railroad for a term of years, still maintains corporate organization, keeps an office and an office force, and collects the rentals from the lessee company and distributes the sums among its shareholders. It has also agreed to keep up its corporate organization, and, if necessary, to use its corporate powers for the benefit of the lessee. And its activities do not stop here. The affidavit in defense filed by the collector, which I understand the Pennsylvania practice takes as true, shows that the company receives annually sums of money as interest on deposits and maintains a contingent fund from which it also receives annual sums as dividends. The return discloses that the amount of dividends received for the year ending December 31, 1909, as interest on deposits and from its contingent fund, was $24,471.07. The nature and amount of the investments are not specified in the record, but they must be very considerable, in view of the annual income derived.

We are therefore brought to the direct question, Is a live corporation which, though it has leased its railroad property for a term of years, maintains and has agreed to maintain its corporate organization, collects and distributes an annual rental of $252,612, keeps and maintains an office and an office force at large expense, deposits money upon interest and receives and distributes the earnings thereof, invests a large fund which, together with interest on deposits, yields over $24,000 a year, doing business within the meaning of the corporation tax act? The amount of business done is utterly immaterial. The doing of any business with the advantages which inhere in corporate organization brings the corporation within the terms of the act. Such was the ruling in the Flint case, after full consideration by this court of the terms and scope of the law.

It is said, however, that this case is controlled by the ruling in the Zonne case, which was decided at the same time as the Flint case (220 U. S., 187). It seems to me that the present case is quite unlike that one. There the corporation which owned a piece of real estate had leased it for a term of 130 years at an annual rental of $61,000 and had at the same time amended its corporate organization so as to limit its powers to the sole purpose of holding the title to the lands leased and of receiving and distributing among its stockholders the rentals that accrued under the lease and the proceeds from any disposition of the land. This was the whole extent of its activity, and the amounts

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derived therefrom represented its entire income. In that case the court held that the corporation had practically gone out of business and had disqualified itself from any activity in respect thereof, and therefore did not come within the scope of the act.

In the present case the corporation has not disqualified itself from business activity. It maintains a considerable force in active employment and, entirely apart from the receipts from the railroad lease, so deposits and invests its funds as to create, in these days of low interest upon good investments, an annual income of over $24,000, as appears by its return. The amount derived from investments depends upon the exercise of judgment and the efficiency of management. If business includes everything that occupies the time, attention, and labor of men for profit, it seems to me that these facts show that the Minehill Co. is carrying on business in the present instance.

I am unable to agree that a corporation whose officers and agents are engaged in its behalf in selecting banks in which to deposit large sums of money, in passing upon and choosing securities in which corporate funds are to be invested, and then in distributing the interest and profits accruing therefrom among its stockholders, is not engaged in doing business in the sense that the corporation in the Zonne case was not.

I think the present case is much nearer the ruling made by this court in the Corporation Tax Cases in the matter of the realty companies therein involved. Take, for instance, the Park Realty Co. That corporation was organized to work, develop, sell, and convey real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, etc. It appeared that at the time of the imposition of the tax the sole business or property owned by the Realty Co. was the Hotel Leonori. It was leased for 21 years at an annual rental of $55,000. The corporation was engaged in no business except the management and lease of that hotel property, and was in receipt of no other income than that derived from its rental, and had no assets other than that property and the income thereof. It was held to be doing business within the meaning of the act. The Minehill Co., it seems to me, is doing more and a greater variety of business than was attributed to the Park Realty Co. as the basis of the assessment upon it. Others of the realty companies held taxable in the Corporation Tax Cases, it seems to me, were engaged in as little business activity as is the corporation herein involved.

With deference to the majority opinion, I think the Minehill Co., upon the facts here adduced, is engaged in business and ought to be held liable to the tax.

Mr. Justice HUGHES and Mr. Justice LAMAR concur in this dissent.

(T. D. 1848.)

Delinquent corporations.

Instructions relative to cases of corporations delinquent in filing returns of net income for the calendar year ended December 31, 1912.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1913.

SIR: This office is in receipt of your letter of the 8th instant, submitting a list of corporations in your district charged with delinquency in filing return of net income for the year ended December 31, 1912.

In reply, you are advised that this list should be gone over carefully to determine which cases are to be prosecuted in pursuance of the policy of this office as indicated in correspondence and decisions of prior years.

The multiplicity of suits is to be avoided, if possible. It is not the policy of this office to involve citizens in litigation for this offense without first giving them an opportunity to settle their controversies

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with the Government by compromise. However, where the delinquent corporation has been notified of its privilege to make an offer in compromise, but refuses or neglects, and has sufficient assets from which a judgment would be collectible, there is no option except to report it to the United States attorney, as the law requires.

In reporting a case to the United States attorney, you will please give the location of the office of the corporation and the names and addresses of its officers, with your opinion as to there being sufficient assets to make a judgment collectible. It is suggested that before recommending prosecution a deputy collector should be instructed to call upon the corporation to ascertain if it is now engaged in business and the name of the party to be served with papers if suit is brought and that it does not propose to make any overtures for settlement by way of compromise, or that the revenue agent of the division be requested to make the necessary investigation.

After such investigation has been made, if you find, in the light of the instructions hereinbefore given, that you have no option except to report the corporation to the United States attorney for prosecution, you will report each case separately to that officer on Form 166 and send a copy thereof to this office.

Respectfully, W. H. OSBORN, *Commissioner.*

COLLECTOR OF INTERNAL REVENUE,
San Francisco, Cal.

(T. D. 1849.)

Distilled spirits—Decision of United States Supreme Court.

1. PRODUCTS OF DISTILLATION.

All products of distillation, by whatever name known, which contain distilled spirits or alcohol on which the tax imposed by law has not been paid, considered and taxed as distilled spirits (sections 3248 and 3254, Revised Statutes of the United States).

2. PORTO RICAN BAY RUM.

Porto Rican bay rum considered "distilled spirits" and taxed accordingly. Bay rum imported from Porto Rico subsequent to the act of April 12, 1900 (the Foraker Act), and prior to the act of February 4, 1909, subject to tax.

3. ACT OF FEBRUARY 4, 1909.

The act of February 4, 1909, imposing tax on bay rum brought from Porto Rico into the United States was not a declaration of a new policy, but a more explicit expression of the purpose of prior law made necessary by judicial construction of that law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 5, 1913.

The appended decision of the United States Supreme Court in the case of Jordan, collector of internal revenue, *v.* Roche, and Jordan, collector, *v* Ross is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN, *Commissioner.*

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SUPREME COURT OF THE UNITED STATES. NOS. 202 AND 203. OCTOBER TERM, 1912.

Edward B. Jordan, collector of internal revenue, v. *James W. Roche. Edward B. Jordan, collector of internal revenue*, v. *Charles H. Ross and William P. Ross.*

ON a certificate from the United States Circuit Court of Appeals for the Second Circuit.

[April 28, 1913.]

Mr. Justice McKENNA delivered the opinion of the court:

Actions were brought in the Circuit Court, Eastern District of New York, to recover money paid upon certain importations of bay rum from Porto Rico. Judgment was entered for defendants in the actions, and error was prosecuted from the Circuit Court of Appeals for the Second Circuit, and that court certifies the following question to this court:

Was bay rum imported from Porto Rico subsequent to the passage of the act of April 12, 1900, and prior to the passage of the act of February 4, 1909, subject to the payment of a tax equal to the internal-revenue tax imposed in the United States, under sections 3248 and 3254, on "distilled spirit, spirits, alcohol, and alcoholic spirit"?

The facts are these: In the years 1907 and 1908 plaintiffs imported from the island of Porto Rico certain casks of bay rum manufactured in said island. Upon arrival at the port of New York, the collector of internal revenue for the first district collected taxes upon the same under the act of April 12 and sections 3248 and 3254 of the Revised Statutes of the United States. Plaintiffs duly protested against such exaction and paid the same to obtain delivery of the goods. Bay rum is a fragrant spirit obtained by distilling rum with the leaves of the bayberry or by mixing various oils with alcohol.

The act of April 12, 1900, referred to in the question certified, is known as the Foraker Act. Section 3 provides that after the passage of the act all merchandise coming into the United States from Porto Rico and reversely shall be subject to a duty of 15 per cent of the duties which were required to be levied upon like articles imported from foreign countries, and, in addition thereto, articles of merchandise of Porto Rican manufacture coming into the United States shall pay "a tax equal to the internal-revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture." Articles of United States manufacture coming into Porto Rico were required to pay a tax equal to the internal-revenue tax imposed on like articles of Porto Rican manufacture. It was provided that whenever the legislature of Porto Rico should put into operation a system of local taxation the President should make proclamation thereof, and thereupon all *tariff duties* upon goods going from the United States into Porto Rico or from Porto Rico to the United States should cease and all such articles should be free of duty.

Section 4 of the act provided that the duties and taxes imposed under section 3 should not be paid into Treasury of the United States, but should be placed at the disposal of the President, to be used for the government of Porto Rico, and that upon the organization of the government of Porto Rico such moneys should be transferred to the local treasury of Porto Rico, the duties and taxes to be collected at such ports and by such officers as the Secretary of the Treasury should designate. And it was provided that as soon as civil government was established in Porto Rico the President was to make proclamation thereof, and thereafter all duties and taxes in Porto Rico under the provisions of the act should be paid into the treasury of Porto Rico and expended as required by law.

The proclamation of the President referred to in section 3 was issued July 25, 1901 (32 Stat., pt. 2, p. 1893), and all *tariff* duties on merchandise coming into the United States from Porto Rico ceased. The internal revenue tax upon articles of Porto Rican manufacture remained as that imposed "upon the like articles of merchandise of domestic manufacture" (section 3). This, however, plaintiffs dispute, contending that the Foraker Act was intended to be, and was declared to be, an act temporarily

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to provide revenue, and that with the institution of a system of taxation in Porto Rico the act ceased to have operation. The contention is untenable. The act explicitly declares that the *tariff duties* shall cease. The distinction was deliberate and its effect unmistakable. We repeat, therefore, that the internal revenue tax upon Porto Rican articles remains as that imposed "upon the like articles of domestic manufacture." Upon the quoted words the controversy in this case turns. What shall determine the likeness between articles of domestic and Porto Rican manufacture, their name or their substance? The latter is the Government's contention; the former is that of plaintiffs.

The contention of plaintiffs has the support of Newhall *v.* Jordan in the Circuit Court of the Eastern District of New York (169 Fed., 586); also of the Circuit Court of Appeals of the Second Circuit in Anderson *v.* Newhall (161 Fed., 906), sustaining a judgment of the Circuit Court of the Southern District of New York. But the Circuit Court of Appeals seems to have come to doubt the correctness of its ruling, for the present certificate is from that court, and bears the signature of Judges Lacombe and Ward, who constituted a majority of the court when Anderson *v.* Newhall was decided. We realize, therefore, that the contentions of the parties present a close question.

Bay rum is a fragrant spirit obtained by distilling rum with the leaves of the bayberry, or by mixing various oils with alcohol. We must seek its likeness in the revenue laws, and the Government contends that it is found in sections 3248, 3254, 3251, and 3282, as respectively amended by the acts of August 28, 1894 (28 Stat., 509, 563), and March 1, 1879 (20 Stat., 327, 335).

Plaintiffs contend that "Porto Rican bay rum is the article of merchandise 'like' to bay rum of domestic manufacture, and not 'like' to distilled spirits of domestic manufacture." And then insisting, and quoting the Commissioner of Internal Revenue in support of the insistence, that as there is no internal revenue tax imposed on bay rum, as such, it follows necessarily "that if bay rum of domestic manufacture does not pay a tax, then the article of Porto Rican manufacture is not liable to pay a tax." And stress is put upon "manufacture" as defined in Anheuser-Busch Association *v.* United States (207 U. S., 556, 562), where it is said: "There must be a transformation; a new and different article must emerge, 'having a distinctive name, character, and use.'" And bay rum, it is asserted, satisfies the distinction and has been regarded as satisfying it in the laws, also commercially and practically. It has never been treated, it is said, as distilled spirits, but has been treated as different "by every person and every court and every department of the Government until these Porto Rican imports were made." This is the substance of plaintiffs' argument. We can not follow it in its details.

The Government replies to it that the purpose of the Foraker Act was to apply the revenue laws of the United States to Porto Rican articles and to do this comprehensively, not by special or variable adaptations. No article containing alcoholic spirits, the Government says, is taxed in the general statutes of the United States by its commercial name, but that all such articles are provided for and taxed in chapter 4 of the Revised Statutes under the name of "distilled spirits." It is hence argued that domestic bay rum being "distilled spirits" for the purpose of internal revenue taxation, Porto Rican bay rum must be considered as "distilled spirits" and subject to the same tax. In other words, the likeness is established by the essential nature of the article, not by its name. "If this be not so," it is further argued, "not only will the internal revenue tax on Porto Rican bay rum fail, but the tax on Porto Rican alcohol, whisky, brandy, gin, ordinary rum, and on all wines, liqueurs, and cordials, will also fail, because no tax is laid on any such article *eo nomine* by our internal revenue laws, but all are embraced in one generic article 'distilled spirits.'" We think the argument is complete and irresistible. The purpose of the Foraker Act, the provisions of the internal revenue laws, and the administration of both by departmental officers, ll concur in support of the Government's contention. The purpose of the Foraker

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Act was the equal taxation of Porto Rican articles and domestic articles; the provisions of the internal revenue laws do not describe articles by name, but by character; the revenue officers have construed them as applicable to Porto Rico, except for a few months following the decision in Newhall *v.* Anderson, collector.

The language of the revenue laws is comprehensive enough to cover all distilled spirits. Section 3248, after specifically defining them to be "that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance," provides that "the tax shall attach to this substance as soon as it is in existence as such," no matter in what state it may be subsequently separated or in what other substance it may be subsequently transferred.

By section 3254 it is provided that "all products of distillation, by whatever name known, which contains distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits." In other words, all mixtures or dilutions of the substance so defined, and more specifically in section 3248, are subject to a tax as "distilled spirits." And it is provided in section 3282, as amended, that the use of "spirits or alcohol, in manufacturing vinegar or any other article, or in any process of manufacture whatever," is prohibited "unless the spirits or alcohol so used shall have been produced in an authorized distillery and the tax thereon paid."

The purpose of the law to impose a tax upon the compounds of alcohol under the single designation of "distilled spirits" receives confirmation from the exemptions from the tax. Six exemptions are pointed out by the Government, as follows: (1) Alcohol withdrawn for scientific purposes by scientific institutions or colleges of learning; (2) wine spirits used in the fortification of sweet wines under certain restrictions; (3) distilled spirits used in the manufacture of sugar from sorghum, or (4) purchased by the United States for Government uses, or (5) exported in bond or with benefit of drawback of taxes paid; and (6) distilled spirits denatured in accordance with the denatured alcohol act.

These considerations demonstrate, we think, that bay rum is subject to a tax as an alcoholic distillate.

We have already stated the chief contention of plaintiffs to be that the test of a tax on Porto Rican articles must be a tax upon domestic articles of like name, and that this is especially so as to bay rum, it is contended, is established by the fact that under the tariff act bay rum as a commercial article is taxed at a lower rate than brandy and other spirits not specifically provided for. And, further, that bay rum, under the revenue act of June 13, 1898, was taxed or held taxable by the Commissioner of Internal Revenue under the head of "perfumery and cosmetics." So also the ruling of the commissioner, it is urged, refusing to hold that druggists and bay-rum dealers were liquor dealers, which, it is contended, he would necessarily have to hold them to be if bay rum were to be considered an alcoholic distillate. It is not necessary to answer these contentions in detail. They have, when taken by themselves, an appearance of strength. They may, however, be explained by other statutory provisions. A general answer to them is that the purpose of the Foraker Act was, as we have said, to subject Porto Rican articles to the internal-revenue laws of the United States, and under those laws articles are taxed not by their commercial names or uses but according to their alcoholic content under the generic name of "distilled spirits."

One other contention of plaintiffs we may notice. On February 4, 1909, Congress passed the act by which it is provided "that upon bay rum, or any article containing alcohol, hereafter brought from Porto Rico into the United States for consumption or sale, there shall be paid a tax of one dollar and ten cents per proof gallon," and the Commissioner of Internal Revenue is given power to establish rules to make the act effective. It is insisted that this act is a declaration by Congress that bay rum

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was not subject to a tax under prior statutes. The history of the act rejects the contention and manifests that the act was passed in consequence of the decision in Newhall *v.* Anderson and the other decisions to which we have referred. The law was not the declaration of a new policy, but a more explicit expression of the purpose of the prior law, made necessary by the judicial construction of that law.

The question certified is therefore answered in the affirmative.

(T. D. 1850.)

Special excise tax on corporations—Decision of court.

1. EFFECT OF DISSOLUTION—TAXES DUE AFTER DISSOLUTION.

Affirming two previous decisions of the United States District Court for the District of New Jersey—Treasury Decision 1736 (192 Fed., 223; T. D. 1773).

2. JUDGMENT FOR UNITED STATES.

Judgment in favor of United States for tax, 5 per cent penalty, interest, and costs, affirmed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 17, 1913.

The appended decision of the United States Circuit Court of Appeals for the Third Circuit in the case of General Inspection and Loading Co. *v.* United States is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT. MARCH TERM, 1913.
No. 1714.

General Inspection and Loading Co., defendant-plaintiff in error, v. *United States.*

IN ERROR to the District Court of the United States for the District of New Jersey.

Before GRAY, BUFFINGTON, and MCPHERSON, Circuit Judges.

BUFFINGTON, *Circuit Judge:* In the court below the United States brought suit against the General Inspection and Loading Co., a corporation of New Jersey, to recover an excise tax imposed under section 38 of the act of August 5, 1909 (36 Stat. L., 11), commonly known as the Federal corporation tax act. The history of the case is fully set forth in an opinion by the court below, sustaining demurrers to special pleas, reported at 192 Federal Reporter, 224, and by reference thereto, we obviate a present restatement. In the subsequent trial of the general issue a jury was waived and the case heard on an agreed statement of facts by the judge, who found for the United States in the opinion following:

This cause came before the court in the first instance on demurrers filed on behalf of the Government to certain special pleas interposed by the defendant in addition to the general issues. The demurrers were sustained, and, no additional or amended pleas having been filed, the plea of the general issue alone remains. The case has been brought to trial before the court without a jury, a jury having been waived, upon a statement of facts agreed upon by the attorneys of the respective parties. With the exception of one point, nothing need be added by the court at this time to what was said in sustaining the demurrers. The additional point now raised is whether or not the penalties for nonpayment of the tax provided by the fifth subdivision of section 38 of the act in question can under the facts rightfully be imposed in this case. The subdivision referred to provides that "all assessments shall be made and the several corporations, joint-stock companies or associations, or insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June * * * and to any sum or sums due and unpaid after the thirtieth day of June in any year and for ten days after notice and demand thereof by the collector there shall be added the sum of five per centum on the

amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due."

The statement of facts, so far as it relates to the notices given to and demands made upon the defendant in respect of the taxes in question, is as follows:

"That the Commissioner of Internal Revenue, on May 11, 1910, made an assessment of one thousand seven hundred and thirty-one dollars and seventy-five cents against said defendant upon said return, being an assessment of one per cent of the net income of one hundred seventy-three thousand one hundred seventy-four dollars and sixty-six cents, as shown by said return; and on May 19, one thousand nine hundred and ten, sent by mail a notice of such assessment and demand for payment thereof, addressed to the defendant at the place of the principal office of said defendant in Newark, New Jersey, at the time of dissolution; which said notice was received by the person who was at the time of its dissolution the agent in charge of the principal office of said defendant; that on the thirtieth day of June, one thousand nine hundred and ten, a second notice of said assessment and demand for payment thereof, contained in a franked envelope addressed to the said defendant at the place of its principal office at the time of its dissolution in Newark, New Jersey, and bearing the return address of the said collector, was mailed in the post office at Newark, New Jersey, by the collector of internal revenue for the fifth district of New Jersey, which notice contained a statement that unless payment of said tax so assessed should be made within ten days thereafter a penalty of five per cent would attach and interest at the rate of one per cent per month from the expiration of said ten days. The person who was the agent in the charge of the principal office of said defendant at the time of its said dissolution has no record nor recollection of the receipt of this notice, and it has not been returned to the said collector by the Post Office Department."

The provision of the statute concerning the imposition of penalties for nonpayment of the tax is given above. The debatable question is whether the notice as given by the collector of June 30, 1910, was an adequate and sufficient compliance with the law to warrant their exaction. The notice itself complied with the terms of the statute. It was, however, not served personally but by mail in a franked envelope addressed to the defendant at the place of its principal office at the time of its dissolution, which envelope bore thereon the return address of the collector. The envelope and contents were never returned to the collector by the Post Office Department, and the agent in charge of the principal office of the defendant, at the time of its dissolution, has no record or recollection of the receipt of said notice. The well-settled presumption is that the letter was received. (Rosenthal *v.* Walker, 111 U. S., 185, 193.) See also the large number of cases therein cited. The presumption thus arising is not overcome by anything appearing in the statement of facts. The receipt of the notice is not denied. That its receipt was not made a matter of record by the defendant's former agent, or that he had no recollection of its receipt, are insufficient to overcome the presumption, and particularly must this be so when, as in this case, the envelope bore a return notice to the collector, but was never returned.

Furthermore, the third paragraph of the eighth subdivision of section 38 of the act under which the tax was imposed is as follows:

"All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section."

Section 184 of the Revised Statutes, relating to the notice and demand pertinent to the collection of internal-revenue taxes, permits notice to be given to the person liable therefor by leaving the same at his dwelling or usual place of business, or by sending the same by mail. In the absence of any prescribed method of giving the notice now in question, this section is applicable.

Counsel for the defendant contends, however, that notice to the statutory agent, in view of the fact that the corporation had previously been dissolved, was insufficient and nugatory. His position, however, rests upon a misconception of the facts. The notice was addressed to the *defendant at the place of its principal office* at the time of its dissolution. This was sufficient, particularly as there is an uncontradicted and consequently prevailing presumption that it was received. As neither the tax nor any part of it has been paid, judgment will be entered in favor of the plaintiff and against the defendant.

On entry of judgment against it the defendant sued out this writ. The case has had our careful consideration and an additional opinion by this court could but be an effort to put in different words the reasoning and language of the two foregoing opinions, which adequately and accurately cover the case. Approving, therefore, the reasoning and the result reached in the court below, this court now affirms the judgment on the opinion quoted above and that reported at 192 Federal Reports, 224.

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(T. D. 1851.)

Adulterated butter—Decision of court.

1. ASSIGNMENTS OF ERROR.

Charges given will not be reviewed where the assignments of error state no facts proven or in issue to enable the appellate court to determine whether the charges were material or relevant to the issue submitted to the jury.

2. INTENT—SPECIAL TAX.

For a dealer in adulterated butter to be liable to special tax under the act of May 9, 1902, it is immaterial whether the dealer knowingly engaged in the business or not.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 19, 1913.

The appended decision of the United States Circuit Court of Appeals for the Fifth Circuit in the case of C. H. Lawrence & Co. *v.* Seyburn, collector of internal revenue, is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT. No. 2370.

C. H. Lawrence & Co. v. *Edward I. Seyburn.*[1]

ERROR to the United States District Court, Eastern District of Louisiana.

Before PARDEE and SHELBY, Circuit Judges, and GRUBB, District Judge.

BY THE COURT: The first and second bills of exception upon which the first four assignments of error are predicated show no state of facts proven or in issue for the court to determine whether or not the court's charges to the jury specially excepted to were material or even relevant to the issue to be submitted to the jury, and therefore neither of the said assignments is well taken.

For a dealer in adulterated butter to be liable to a tax by the United States under the statute approved May 9, 1902 (32 Stat. L., 193), it is immaterial whether or not the said dealer "knowingly" engaged in the business.

We find no reversible error in the transcript, and the judgment of the District Court is *affirmed.*

(T. D. 1852.)

Special excise tax—Delinquent corporations.

Where corporations have gone out of business, leaving no assets, no proceedings to be instituted for penalty for failure to make return. Assets distributed among stockholders available for collection of tax, but not for penalty. General instructions as to removing names from delinquent list.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 29, 1913.

SIR: In reply to your letter of the 22d instant, relative to delinquent corporations in your district, which went out of existence dur-

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[1] 202 Federal Reporter, 913.

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ing 1912, leaving no assets, after having transacted business during a portion of said year, you are advised that the former officers of such corporations can not be held individually liable for the penalty prescribed by law, nor are the individual funds or assets of stockholders available. If, however, a corporation has gone out of business, leaving assets which have been distributed among the stockholders, such assets are held to be available for collection of the tax (T. D. 1615), but not for the penalty.

In this connection, your attention is called to T. D. 1710 and T. D. 1848, containing general instructions to collectors, in accordance with which you may, without asking for instructions from this office, eliminate from your delinquent list corporations which have done no business at all during the preceding calendar year, or which have gone out of business leaving no assets, or which, if still in business, have no assets from which judgment could be collected, or which, with their officers, can not be located after due investigation, and thus relieve this office of unnecessary correspondence.

It is therefore suggested that you furnish a list of such corporations to this office, as they accumulate from time to time, reporting the action you have taken and the reasons therefor.

Respectfully,

W. H. Osborn, *Commissioner.*

Collector of Internal Revenue, *Los Angeles, Cal.*

(T. D. 1853.)

Internal-revenue officers expected to serve where the services can be employed to best advantage.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., June 2, 1913.

To internal-revenue agents and others concerned:

It has become a practice with some officers assigned to duty under the supervision of internal-revenue agents, as well as some internal-revenue agents, to complain in case their assignments are not to their liking, and in some instances to enlist the aid of influential persons in their efforts to secure assignment to the particular work and locality they desire. This practice must cease at once.

Internal-revenue agents and officers assigned to duty under their supervision are expected to operate where their services are required, and those who are unwilling or unable to do so are not fitted for this class of work and are at liberty to seek transfers to work of a different character.

In the interests of economy and efficiency, save in exceptional instances, it is necessary to transfer officers of this class from one

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place to another and from one part of the country to another, and any effort on the part of members of this force to prevent such transfer results in embarrassment to the head of the bureau.

There may be cogent reasons, such as serious illness of the officer or members of his immediate family, why the assignment of a member of this force should not be hurriedly changed. In such cases the commissioner should be promptly advised after the order of transfer is made and appropriate action will be taken, but no frivolous excuses, such as a desire to work in a particular locality or to remain at or near home, will be accepted as a reason why the transfer should not be made.

You will please advise the members of your force accordingly.

W. H. OSBORN, *Commissioner.*

(T. D. 1854.)

Assignment of officers to distilleries and enforcement of law relative to supervision of production of distilled spirits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1913.

To collectors of internal revenue, internal-revenue agents, and others concerned:

Information contained in letters and reports received at this office discloses a growing disposition on the part of some distillers who are operating registered distilleries to defeat this office in its efforts to secure an honest and uniform enforcement of the internal-revenue laws, and to make it appear that the means adopted to prevent fraudulent practices at distilleries of this character and to insure the payment of the tax on spirits produced from materials mashed impose unnecessary hardship and expense upon the distillers.

It is asserted on the part of those interested that if the Government officers assigned to the supervision of distilleries were honest there would be no necessity for drastic regulations and instructions. If reply be necessary in this respect it may be stated that the means adopted by this office to secure an honest and uniform enforcement of the law are beneficial alike to the Government and the honest taxpayer, and since fraudulent practices can not be indulged in at registered distilleries without the knowledge, consent, and cooperation of the distiller or his employees it is not understood why the alleged shortcomings of supervising officers should be set up as a reason why effective means should not be adopted to safeguard the interests of the Government.

While it is not the desire or purpose of this office to embarrass distillers in the conduct of their business, nothing will be left undone

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that may be lawfully done to protect the Government and honest manufacturers and to bring to justice those offending against the law, whether the offender be the distiller or a Government officer; and those who would so offend in the future are now warned that the full force of the law and the power of the Government will be invoked to this end.

W. H. OSBORN, *Commissioner.*

(T. D. 1855.)

Opium—Manufacture of opium—Decision of Supreme Court.

1. OPIUM LAW A TAXING ACT.
   Section 36 of the act of October 1, 1890, imposing a tax on opium manufactured in the United States for smoking purposes, was primarily designed as a taxing act.
2. PRIMARY MANUFACTURE OF OPIUM.
   The primary manufacture of opium for smoking purposes by treating crude opium in such manner as to convert it into a different form, rendering it fit for smoking, is subject to the tax prescribed.
3. MIXTURE OF YEN SHEE NOT MANUFACTURE.
   The mere mixing of smoking opium with the residue of opium that has been smoked, known as "yen shee," and heating the same, is not a "manufacture of opium for smoking purposes" within the meaning of the statute.
4. CONSTRUCTION OF CRIMINAL STATUTES.
   The general principle is that criminal statutes ought not to be extended by construction.
5. JUDGMENT AFFIRMED.
   The judgment of the District Court, sustaining a demurrer to two counts of an indictment, affirmed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 3, 1913.

The appended decision of the United States Supreme Court in the case of the United States *v.* Alfred Shelley is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN, *Commissioner.*

SUPREME COURT OF THE UNITED STATES. NO. 943. OCTOBER TERM, 1912.

United States, plaintiff in error, v. *Alfred Shelley.*

IN error to the District Court of the United States for the Southern District of New York.

[May 26, 1913.]

Mr. Justice PITNEY delivered the opinion of the court:

We have here under review a judgment of the District Court sustaining a demurrer to two counts of an indictment for a violation of section 36 of the act of Congress approved October 1, 1890 (ch. 1244, 26 Stat., 567, 620).

This act is the so-called McKinley tariff law, and provided for the tariff duties to be paid upon articles imported from foreign countries and also for the collection of

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certain internal-revenue taxes. The tariff provisions are of course long since superseded. Section 36 reads as follows:

That an internal-revenue tax of $10 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue.

The counts in question are the second and third counts of the indictment. The former of these avers (omitting formal matters) that, without having given bond, etc., the defendant "did engage in the manufacture of opium for smoking purposes in and by employing and using the process by means of which yen shee, which is the product or ashes which remains after prepared, or smoking, opium has been used and smoked by the smoker, is dissolved in water after having been permitted to remain in solution in water in any receptacle or vessel for a period of time; furthermore, by means of which the said aqueous solution of yen shee is strained and purified so as to remove from the said solution all matter which is foreign to such opium as may be contained in the said yen shee, such matter consisting of the product produced as the result of the partial combustion of prepared, or smoking, opium in the course of its use by the smoker for smoking purposes, and by means of which the said aqueous solution of yen shee thus strained and purified is heated and cooked in any receptacle or vessel for a period of time and until a product is produced as the result, among other things, of the evaporation of a part of the aqueous content of the said solution in the course of such heating and cooking, which said product thus remaining is smoking, or prepared, opium of an inferior grade, and which said product resembles in appearance and consistency thick molasses, and is opium for smoking purposes, against the peace of the United States and their dignity, and contrary to the form of the statute," etc.

The third count charges that the defendant, without having given bond, etc., "did engage in the manufacture of opium for smoking purposes, in and by employing and using a process by means of which a high-grade smoking opium is dissolved in water in any receptacle or container; and yen shee, which is the product of the partial combustion of smoking, or prepared, opium remaining when the smoker has used such smoking, or prepared, opium for smoking purposes, is in like manner dissolved in water, in any receptacle or container, and the said aqueous solution of yen shee is strained and purified so that all substances contained therein which are foreign to the opium content in the said solution, and to the water therein contained, are removed, and which said substances so removed consist of the product produced as the result of the partial combustion of prepared, or smoking, opium in the course of its use by the smoker for smoking purposes; and the said process is, further, that the said aqueous solution of yen shee thus strained and purified is mixed with the aforesaid solution of high-grade smoking, or prepared, opium, and the two solutions thus mixed and combined are heated and cooked in any receptacle or vessel over a slow fire until a product is produced by such heating and cooking and by the evaporation of a part of the aqueous content of the said combined solution, which has the consistency and appearance of thick molasses, and which said product is known as smoking, or prepared, opium, and which said product is opium prepared for smoking purposes; against," etc.

This indictment seems to have been framed with the object of indirectly reviewing Shelley v. United States (198 Fed., 88), where the Circuit Court of Appeals for the Second Circuit reversed a conviction that had been had in the District Court under a previous indictment, upon grounds succinctly expressed in the opinion, as follows:

It appears that, when smoking opium has been produced, it may be smoked more than once. That is to say, the residuum left after a first smoking may be simply heated and smoked again. If to this residuum (known as yen shee) some additional smoking opium is added each time it is reheated, the process of resmoking may be continued longer. We are of the opinion that the mere mixing of smoking opium with the residue of opium that has been smoked, and heating the same, is not a "manu-

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facture of opium for smoking purposes" within the meaning of the statute. The manufacture which the statute contemplates is complete when from the crude opium there has been produced the smoking opium, with which alone, as defendant contended, he operated, in its unsmoked and smoked condition. * * * We think there was error in the refusal to charge that, if the jury found that defendant only mixed smoking opium with the residue which remains after smoking, his act was not a manufacture of opium for smoking purposes within the meaning of the statute.

It appears that the primary manufacture of opium for smoking purposes is done by treating crude opium in such manner as to convert it into a different form, thus rendering it fit for smoking. It is conceded that this manufacture is subject to the tax prescribed by section 36 of the act of 1890. And see Marks *v.* United States (196 Fed., 476). The counts now under consideration describe two processes by which the residuum of opium remaining after smoking (yen shee) may be reconverted into a form fit for smoking, in the one case by dissolving it in water, straining and purifying the solution so as to remove foreign matter, and then heating and cooking the refined solution, and thereby producing an inferior grade of smoking opium; the other process differs in that an admixture of smoking opium of a high grade is employed together with the yen shee.

In the argument counsel discussed the proper definition of the term "manufacturing," citing Kidd *v.* Pearson (128 U. S., 1, 20), and United States *v.* Knight (156 U. S., 1, 14), to which may be added Anheuser-Busch Association *v.* United States (207 U. S., 556, 559), which had to do with the drawback provision of the McKinley law (26 Stat., 567, 617, ch. 1244, sec. 25).

But, aside from the general principle that criminal statutes ought not to be extended by construction, we have here the additional consideration that this statute was primarily designed as a taxing act. Section 36 must be read in connection with the accompanying administrative provisions, which render it clear that the tax was designed to yield substantial revenue, and not merely or primarily to prohibit the manufacture of smoking opium. It may easily be believed that if (irrespective of constitutional limitations upon its power) Congress were undertaking to stamp out the practice of opium smoking, it might prohibit such processes of reclaiming as were charged against the defendant in the second and third counts of this indictment. But it is not so easy to believe, in the absence of clear language requiring such a construction, that in prescribing a revenue tax upon the manufacture of opium for smoking purposes, it intended to subject the same substance more than once to the tax or to require surveillance over opium-smoking resorts—in which, it would seem, such treatment of the residuum might most readily be conducted—the same as over a factory or other establishment where the primary conversion of crude opium into smoking opium is conducted.

Of course the prohibition is not more extensive than the taxing clause; and so we are satisfied that the offenses charged in the second and third counts of this indictment are not within the denunciation of section 36 of the act.

Judgment *affirmed.*

(T. D. 1856.)

Distilled spirits—Introduction of liquor into the Indian country—Decision of Supreme Court.

1. Liquor Prohibition.

The introduction of liquor into the Indian country from points outside the State of Oklahoma is forbidden.

2. Previous Laws in Force.

Section 2139, Revised Statutes, as amended by the act of July 23, 1892, and the act of January 30, 1897, was not repealed as to intrastate transactions by the enabling act of June 16, 1906, and the admission of Oklahoma as a State thereunder.

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3. REVERSAL OF JUDGMENT.

The District Court erred in sustaining the demurrer to the indictment, and judgment should be reversed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 3, 1913.

The appended decision of the United States Supreme Court in the case of the United States *v.* Bob Wright is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN, *Commissioner.*

SUPREME COURT OF THE UNITED STATES. No. 918. OCTOBER TERM, 1912.

United States, plaintiff in error, v. *Bob Wright.*

IN error to the District Court of the United States for the Eastern District of Oklahoma.

[May 26, 1913.]

Mr. Justice PITNEY delivered the opinion of the court:

The defendant in error was indicted in the United States District Court for the Eastern District of Oklahoma, the charge being that—"on the 19th day of March, in the year 1912, in the county of Muskogee, in the said district, and within the jurisdiction of said court, the said county and district then and there being a portion of the Indian country of the said United States, (he) did at the time and place aforesaid, unlawfully, willfully, knowingly, and feloniously introduce into said Indian country 1 quart of malt, vinous, spirituous, distilled, ardent, and intoxicating liquor, to-wit, whisky, contrary to the form of the statute in such case made and provided," etc.

The District Court sustained his demurrer, and the case is brought here under the criminal appeals act.

The statutes involved are section 2139 of the Revised Statutes, as amended by the act of July 23, 1892 (ch. 234, 27 Stat., 260), and by the act of January 30, 1897 (ch. 109, 29 Stat., 506); also section 8 of the act of March 1, 1895 (ch. 145, 28 Stat., 693); and the Oklahoma enabling act of June 16, 1906 (ch. 3335, 34 Stat., 267). Extracts from these are set forth in footnotes to the opinion in *Ex parte* Webb (225 U. S., 663, 671, 677). Muskogee County is a part of what was the Indian Territory.

The District Court in effect construed the indictment as charging, not an interstate transaction, but an introduction of liquor from a point within the State of Oklahoma, but outside of what is now Indian country, into such Indian country. The decision of this court in the Webb case, which had to do with section 8 of the act of March 1, 1895, and the effect of the enabling act upon it; and also the decision of the Circuit Court of Appeals for the Eighth Circuit in United States Express Co. *v.* Friedman (191 Fed., 673) and Mosier *v.* United States (198 Fed., 54)—both of which turned upon the effect of the enabling act upon the act of January 30, 1897—were reviewed by the District Court, and the conclusion reached, principally because of the line of reasoning expressed in the opinion in the Webb case, was—

> That the provisions of Revised Statutes, section 2139, as amended by the act of 1892 and the act of 1897, so far as they related, if at all, to the introduction of liquor into the Indian Territory from points outside of that Territory, but within what is now Oklahoma, must be considered as having been repealed by the enabling act.

And again:

> This confines offenses of this character, of which the Federal court has jurisdiction, to those in which the liquor is introduced from a point without the State. It is a violation of the State law, as established by the constitutional provision above referred to, to introduce liquor into what was formerly Indian Territory from some other portion

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of Oklahoma, but such violation is an offense exclusively within the jurisdiction of the State court. In order to give the Federal court jurisdiction, it is necessary that the introduction of the liquor should have been from a point without the State. This is an essential element of the offense, so far as the Federal court is concerned, and should therefore be charged in the indictment. It follows that the demurrer must be sustained.

The criminal appeals act (ch. 2564, 34 Stat., 1246) provides for a writ of error, to be taken by the United States from the District Court direct to this court from a decision or judgment sustaining a demurrer to an indictment, "where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded." The present case is clearly within this act, as previously interpreted and applied. United States *v.* Sutton (215 U. S., 291, 294); Keitel (211 U. S., 370, 385); Biggs (211 U. S., 507, 518); Stevenson (215 U. S., 190, 195); Miller (223 U. S., 599, 602); Patten (226 U. S., 525, 535); George (228 U. S., 14,17); Anderson (228 U. S., 52); Pacific & Arctic Co. (228 U. S., 87, 100).

Upon the merits, the principal question is whether the acts of 1892 and of 1897 were repealed, as to intrastate transactions, by the effect of the enabling act and the admission of the State, with the constitutional prohibition of the liquor traffic that was prescribed by that act. It is not contended that there was any express repeal. The insistence that there was a necessary repeal by implication is supported by arguments that may be outlined as follows:

(*a*) That since the act of 1895 was a special act, applicable by name to the Indian Territory, it had the necessary effect of superseding as to that Territory the existing general statute (sec. 2139, Revised Statutes, as amended in 1892) against the introduction and sale of intoxicating liquors in the Indian country.

(*b*) That section 8 of the act of 1895 was in turn superseded or repealed *in toto* by the act of 1897 and the enabling act.

(*c*) Or else that the act of 1897, because amendatory only of the general statute against the introduction and sale of intoxicating liquors in the Indian country, had no effect upon the act of 1895 and did not apply to the Indian Territory, because that Territory was covered by the act of 1895.

(*d*) And that whether the acts of 1892 and 1897, or either of them, was in force in Indian Territory prior to the admission of Oklahoma as a State, they were necessarily superseded as to intrastate transactions by the force and effect of that act upon the same grounds on which this court said in the Webb case that the act of 1895 was superseded.

Section 2139, Revised Statutes, providing for the punishment of persons introducing liquor into the Indian country, traces its origin to section 20 of the Indian Intercourse Act of June 30, 1834 (ch. 161, 4 Stat., 732), as amended by act of March 15, 1864 (ch. 33, 13 Stat., 29). The amendment of 1892 (set forth in 225 U. S., 671) extended the prohibition to include ale, beer, and intoxicating liquors of any kind, as well as ardent spirits and wine, and added a clause fixing the venue for complaints, arrests, and trials, including a special provision that complaints for offenses committed in the Indian Territory should be made before the United States Court commissioner or commissioner of the Circuit Court of the United States residing nearest the place where the offense was committed. The penalty under this act, as under section 2139, Revised Statutes, is imprisonment for not more than two years and fine of not more than $300 for each offense.

Next in chronological order was the act of March 1, 1895 (ch. 145, 28 Stat., 693), the title of which is "An act to provide for the appointment of additional judges of the United States Court in the Indian Territory, and for other purposes." Section 8 (set forth in 225 U. S., 672) provides (*inter alia*) that any person carrying into the Territory any vinous, malt, or fermented liquors or other intoxicating drinks shall upon conviction be punished by fine not exceeding $500 and by imprisonment for not less than one month nor more than five years. Other sections have to do with the creation of judicial districts in the Territory, the establishment of courts, the

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appointment of judges, attorneys, marshals, clerks, etc. Section 4 adopts the criminal law provisions of Mansfield's Digest of General Laws of Arkansas, with certain reservations. And section 13 declares—

That none of the provisions of any other acts, or of any of the laws of the United States, or of the State of Arkansas, heretofore put in force in said Indian Territory, except so far as they come in conflict with the provisions of this act, are intended to be repealed, or in any manner affected by this act, but all such acts and laws are to remain in full force and effect in said Territory.

The act of January 30, 1897 (ch. 109, 29 Stat., 506), while having an independent title—"An act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and for other purposes"—was manifestly intended primarily as an amendment of the act of 1892. This appears from a comparison of the clauses defining the acts prohibited, from the circumstance that the act of 1897 contains no provisions of its own prescribing the venue for complaints, arrests, and trials, and especially from the provision of its second section, "that so much of the act of the twenty-third day of July, eighteen hundred and ninety-two, as is inconsistent with the provisions of this act is hereby repealed." The prohibition is made to apply to sales of intoxicants "to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian, a ward of the Government, under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship," and the familiar prohibition of the introduction of intoxicants "into the Indian country" is repeated, with the addition of the following new clause: "Which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States." And the act provides that any person violating its provisions "shall be punished by imprisonment for not less than sixty days, and by a fine of not less than $100 for the first offense and not less than $200 for each offense thereafter."

The act of 1895, although evidently *in pari materia*, is not mentioned in the act of 1897. This circumstance, coupled with the fact that the latter act contains an express repealing clause, is, we think, negatively significant upon the question of implied repeal. In our opinion the act of 1897 was not intended to take the place of section 8 of the act of 1895 after the manner of a revision, and there is no such complete repugnance as to render it clear that that section was intended to be repealed *in toto*.

It is contended that, while the act of 1892 covered the subject of the introduction and sale of intoxicating liquors in Indian country and was applicable to the Indian Territory because it was Indian country, the passage by Congress of the act of 1895, a special act applicable to the Territory by name and covering, by its eighth section, the general subject of the introduction and sale of intoxicating liquors therein, necessarily superseded the former act, so far as the Territory was concerned.

To show the purpose that Congress had in mind in passing this act of 1895, the argument is that prior to the general allotment act of February 8, 1887 (24 Stat., 388, ch. 119), all Indian lands were held in common by the Indian tribes; that soon thereafter it came to be questioned whether section 2139, Revised Statutes, as amended by the 1892 act, would apply to an Indian allottee and his allotment under the 1887 act, for the reason that upon allotment thereunder the individual Indian became a citizen of the United States and his allotment ceased to be Indian country under the accepted definition (Bates *v.* Clark, 95 U. S., 204; *Ex parte* Crow Dog, 109 U. S., 556), because of the Indian title having been extinguished; that beginning with the act of March 3, 1893 (27 Stat., 645, 646, ch. 209), Congress began to contemplate the allotment in severalty of all lands within the Indian Territory and to look forward to the ultimate creation of a new State out of that Territory; that it was supposed that the effect of allotment would be the same as under the 1887 act, in that the lands allotted would cease to be Indian country; and that hence Congress passed

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section 8 of the 1895 act in order that the people residing in Indian Territory might not be left without protection against the introduction and sale of intoxicants when the 1892 act should become inoperative because of the extinguishment of the Indian titles. This argument is ingenious and has much force, but it takes too little account, we think, of section 13 of the act of 1895, above quoted.

Assuming all that is claimed as to the general object that Congress had in view during these years when the Indian Territory was in a transition state, it seems to us safer to rely upon the words of the several acts of 1892, 1895, and 1897 in order to determine the true intent and meaning of the lawmaker. If Congress, in enacting the eighth section of the act of 1895, had intended to totally supersede the act of 1892 as to the Indian Territory, that purpose would naturally have been expressed in plain terms. And so would the act of 1897 presumably have expressed the purpose to supersede and repeal that section, if such purpose had existed. The very fact that Congress contemplated that the situation in Indian Territory was but temporary; that either because of statehood, or because of the allotment of the Indian lands in severalty, the necessity for retaining these prohibitory laws upon the statute book would not long continue, tends to negative a desire on the part of Congress to presently repeal either of them, and therefore rebuts the presumption of an implied repeal of one act by the other.

It seems to us, upon the whole, that during this transition period preceding the admission of Oklahoma as a State, the several acts referred to were intended to and did stand together, excepting so far (if at all) as they were necessarily repugnant one to the other; that is to say, the act of 1892, as amended in 1897, on the one hand, making "Indian country" (a term defined in Bates *v.* Clark, 95 U. S., 204; Clairmont *v.* United States, 225 U. S., 551, 558; and cases cited) the test of the prohibition respecting the introduction of intoxicants; and the act of 1895, on the other hand, employing the territorial test, irrespective of whether it was or continued to be Indian country.

We thus come to consider the effect of the enabling act of June 16, 1906 (ch. 3335, 34 Stat., 267), and the admission of Oklahoma as a State thereunder, which occurred November 16, 1907.

The pertinent clauses of the act may be found in 225 U. S., 677, the clause respecting liquor prohibition being especially important. We should also note the proviso in the first section, that nothing in the State constitution should "be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreements, law, or otherwise, which it would have been competent to make if this act had never been passed." And also this clause from the twenty-first section: "All laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States."

It is suggested, rather than argued, that the reservation of "the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights, by treaties, agreement, law, or otherwise, which it would have been competent to make if this act had never been passed," evidences a purpose *not* to preserve *prior* laws or regulations respecting the Indians. But this is sufficiently answered by what was said in *Ex parte* Webb (225 U. S., 663, 682), where the view of the court was expressed as follows:

It is contended that this does not preserve the existing laws and regulations respecting the Indians, but rather excludes the inference of their continued force and existence by indicating a purpose on the part of Congress to thereafter enact regulations

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for the protection of the Indians in Oklahoma if necessity requires. This, we think, is an inadmissible construction. We deem it unreasonable to suppose that Congress, possessing the constitutional power and recognizing the moral duty to make laws and regulations respecting the Indians, and having already established laws and regulations of this character applicable in the Territory, including some that were established by treaties and agreements, should resolve to wipe them out, and thereby impose upon future Congresses the labor and difficulty of establishing other proper laws and regulations in their stead. In our opinion, the purpose expressed in the proviso to reserve to the Government of the United States the authority to make laws and regulations in the future respecting the Indians is, under the circumstances, evidence tending to negative a purpose to repeal by implication the existing laws and regulations on the subject.

When it is recalled that the new State was made up by combining two Territories theretofore separately existing under different systems of laws, one of them being largely inhabited by Indian tribes, with whom numerous treaties had previously been made, differing from each other in many respects, but each recognizing to some extent the propriety of restricting the liquor traffic, the importance of these clauses in the enabling act—read, as they of course must be read, in connection with the restriction of the manufacture and sale of liquors within those parts of the State known as the Indian Territory and the Osage Indian Reservation for a period of 21 years, imposed upon the new State by section 3 of the act—is very evident.

In the Webb case, as appears from the opinion (p. 676) the Government conceded that the act of 1895 had been repealed by the enabling act and the admission of the State thereunder, saving so far as it prohibited the carrying of intoxicating liquors, etc., from another State into the Territory. The statement to the like effect in the opinion (p. 681) was made in view of this concession; but we see no reason for recalling it. The language used was:

No doubt the enabling act, followed by the adoption of the constitution therein prescribed and the admission of the new State, had the effect of remitting to the State government the enforcement of the prohibition respecting the manufacture, sale, barter, etc., of intoxicating liquors within the State, and respecting commerce in such liquors conducted wholly within the State; and to the extent that the scheme of prohibition established by the enabling act covered the same field that had been covered by the act of 1895, the latter act must be considered as impliedly repealed.

But this had reference only to the act of 1895, and not to the act of 1897, it having previously been stated in the opinion (p. 676) that since section 2139, Revised Statutes, and the act of 1897 contained provisions respecting the sale of intoxicating liquors to Indians, and in this and perhaps in other important respects covered ground not covered by the act of 1895, we must not be understood as deciding that those prohibitions were no longer in force within what was the Indian Territory.

But, because the act of 1895 was impliedly repealed with respect to intrastate manufacture and traffic, it does not necessarily follow that the act of 1892, as amended in 1897, was likewise repealed in respect of that traffic by the enabling act and the admission of the State. The one was a territorial prohibition applicable to the Indian Territory because made so by Congress, irrespective of other considerations; while the other act, applicable to Indian country throughout the States and Territories generally, happened to be applicable to the Indian Territory because that was Indian country. But, as already pointed out, in passing the enabling act, Congress knew that if, and when, and so far as, portions of the Indian Territory ceased to be Indian country, the acts of 1892 and 1897 would cease to apply, irrespective of statehood; and on the other hand, must be deemed to have intended that the establishment of statehood should repeal the act of 1895 with respect to matters wholly intrastate, because that act (whatever reasons may have moved Congress to enact it) was, by its terms, applicable to the Territory as a Territory and as a whole, irrespective of whether it was Indian country; and this kind of internal prohibition of the liquor tarffic would naturally cease with statehood, because inconsistent with local self-government and with equality between the States.

The terms of the act of January 30, 1897, show that it was especially designed to provide for the changes consequent upon the adoption of the policy of allotting the

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Indian lands in severalty. Hallowell *v.* United States (221 U. S., 317). This policy was in progress in the Indian Territory at the time of the passage of the Oklahoma enabling act. The history has been so recently rehearsed that it need not be here repeated. Tiger *v.* Western Investment Co. (221 U. S., 286, 300, 302); Heckman *v.* United States (224 U. S., 413, 435); Mullins *v.* United States (224 U. S., 448); Goat *v.* United States (224 U. S., 458); Demming Investment Co. *v.* United States (224 U. S., 471). Every consideration arising out of the governmental guardianship over the Indians and control over their lands indicated that as to them the liquor prohibition should be maintained after statehood, so far as it was consistent with the control of the State over its internal police. The act of 1892, as amended in 1897, concededly remains in force in other States where there is Indian country or governmental trusteeship over Indian lands or guardianship over the Indians. United States *v.* Sutton (215 U. S., 291, 295). Such legislation is of undoubted constitutionality. United States *v.* Kagama (118 U. S., 375, 383); *Ex parte* Webb, *supra.* The prohibition against introducing liquor into the Indian country has been consistently adhered to for many years, with beneficial results so far as the welfare of the Indians is concerned.

All of these considerations were presumably in the mind of Congress when it passed the enabling act, and they are inconsistent with any tacit purpose to repeal the acts of 1892 and 1897. The liquor prohibition, so far as it concerns the Indians, has always been deemed one of the peculiar responsibilities of the Government at Washington, and it may easily be believed that Congress felt reluctant to delegate the subject matter wholly to the State government that was about to be established in the Indian Territory; especially as the same subject matter in other States remained, as it still remains, under Federal control.

In United States Express Co. *v.* Friedman (191 Fed., 673) the Circuit Court of Appeals for the Eighth Circuit held that the enabling act did not repeal the act of 1897, at least with respect to the introduction of liquor into the Indian country from points outside the State. In Mosier *v.* United States (198 Fed., 54) the same court held the act of 1897 to be in force within the State so far as relates to the sale of liquors to Indians.

Upon the whole, while the matter is not free from difficulty, it seems to us the better argument is against the implied repeal. It follows that the District Court erred in holding the acts in question, viz, section 2139, Revised Statutes, as amended by the acts of 1892 and 1897, to be no longer in force, and erred in sustaining the demurrer to the indictment. The judgment should be reversed and the cause remanded for further proceedings in accordance with the views above expressed.

Judgment *reversed.*

(T. D. 1857.)

Special excise tax on corporations.

Dividends received from corporations which are not subject to the special excise tax on corporations under the decision of the Supreme Court of the United States in the case of the Minehill & Schuylkill Haven Railroad Co. are not deductible from gross income as dividends received from another corporation subject to the tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 9, 1913.

To collectors of internal revenue:

Referring to the decision of the Supreme Court of the United States in the case of the Minehill & Schuylkill Haven Railroad Co., in which said railroad corporation is declared to be exempt from taxation under the special excise tax on corporations, attention is

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called to the fact that in numerous instances the stocks of railroads in similar cases are held by other corporations and that the dividends received from such corporations, whether directly or indirectly, have been heretofore deducted in the return of annual net income of the corporation receiving such dividends as dividends received from other corporations subject to the special excise tax on corporations. It will appear that in such case where the railroad company has leased its property to another corporation and has established the fact, either through a claim for refund or abatement or otherwise, that it is not subject to the special excise tax on corporations, the dividends received by other corporations from such exempted corporation are not properly deductible from gross income in their returns of annual net income.

In each such case, therefore, the collector should institute inquiry from the corporation which has established its exemption from the tax as to the amount of dividends paid, either directly or indirectly, to other corporations for the years 1909, 1910, 1911, and 1912, and upon receipt of such information such other corporations should be immediately notified that the dividends received from such exempted corporation are not under the law deductible from gross income and that amended returns for the years mentioned should be immediately filed, which returns shall eliminate from the deductions all dividends received, either directly or indirectly, from corporations not subject to the tax. These returns should then be forwarded to this office with the next special assessment list, showing the additional amount of tax due. A statement of the facts in each case should also be forwarded for the information of this office.

W. H. Osborn, *Commissioner.*

(T. D. 1858.)

Exportation by parcel post of tobacco, snuff, cigarettes, or playing cards.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., June 10, 1913.

Collector Third District, *New York.*

Sir: Referring to your letter of the 28th ultimo, concerning the exportation by parcel post of tobacco, snuff, cigarettes, or playing cards free of tax, you are advised that the inspection of such articles by your deputy and the affixing of export stamps, under the provisions of article 83 of Regulations No. 29, will not be required in such cases where the tax involved does not exceed the sum of $10.

Respectfully,

W. H. Osborn, *Commissioner.*

Approved:

J. S. Williams, *Acting Secretary of the Treasury.*

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(T. D. 1859.)

Evidence—Claims filed by corporations.

Evidence required in support of claims filed by corporations for abatement of assessments or the refunding of taxes claimed under the decision of the United States Supreme Court in the case of McCoach, collector, v. Minehill, etc., Railroad Co.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 10, 1913.

SIR: Replying to your letter of the 5th instant, inclosing uncertified claims of the ——— Co. for the refunding of special excise taxes paid for the years 1911 and 1912, based upon the principle affirmed by the Supreme Court in the case of McCoach, collector, *v.* Minehill and Schuylkill Haven Railroad Co., and asking to be instructed relative thereto, you are advised that in the completion of these and all similar claims it will be necessary for the claimant to file therewith—

1. A copy of or citation to the laws of the State and all amendments thereto under which it was organized and executed its lease showing definite authority to lease.

2. A duly authenticated copy of its charter or articles of association, with all amendments thereto.

3. Certified copies of all its leases, agreements, or deeds of conveyance whereby it transferred its property and rights to another, with all amendments and contracts of every kind relative thereto.

4. An affidavit duly executed by its president or other chief officer and secretary or treasurer, showing, if such be the facts: (*a*) That the lease of its property covers and conveys all of its franchises, rights, powers, and privileges, other than the right of being a corporation, and all of its property both real and personal essential to its corporate business; (*b*) specifying in detail what other source of income it has, how such income is received, and what disposition is made of the same; (*c*) whether either the lessor or lessee company owned or owns any stock of the other, and if so the amount of such stock and of the dividends accrued or paid thereon for the years the taxes were assessed; (*d*) where it maintains an office and what dividends and other receipts it distributes, the exact character of business it transacts, and what officers act for it and the functions they perform; (*e*) that during the taxing year or years in question the corporation did not exercise its power of eminent domain or put in force any other general or special corporate power vested in it in aid of the business of its lessee, or in the transaction of any other character of business whatever for the doing of which it was primarily incorporated, organized, or authorized.

Respectfully,

W. H. OSBORN, *Commissioner.*

COLLECTOR OF INTERNAL REVENUE,
Cincinnati, Ohio.

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(T. D. 1860.)

Denatured alcohol—Regulations No. 30—Supplement No. 1.

Withdrawal of specially denatured alcohol for manufacturing purposes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 11, 1913.

To enable manufacturers using specially denatured alcohol to procure the same from any denaturer or bonded dealer, a general bond, Form 582A, may hereafter be given, and, where manufacturers have already qualified, may be substituted for the bond, Form 582, heretofore prescribed.

Such general bond will be executed in duplicate, with sureties satisfactory to the collector of the district, and in a penal sum sufficient to cover the tax on all alcohol that may be at any time on hand, in transit, or unaccounted for, and in no case less than $500. One copy of the bond will be retained by the collector and one copy will be forwarded by him to the Commissioner of Internal Revenue.

ART. 2. Upon notice of the approval of the bond by the commissioner, the collector will issue to the manufacturer a withdrawal permit (Form 670) for the full quantity of alcohol covered by the bond. Such permit may be renewed from time to time, as provided in article 5.

ART. 3. In ordering denatured alcohol from any denaturer or bonded dealer, the manufacturer will forward with such order the withdrawal permit issued to him; and on withdrawal of the alcohol for shipment, if from a denaturing warehouse, the officer in charge, or if from a bonded storeroom, the proprietor thereof, will enter on such permit, in the space provided for that purpose, the date of withdrawal, the quantity withdrawn, in proof gallons, the name and location of the warehouse or storeroom, and his own name, which must be duly signed by him.

ART. 4. Such entries and signature must in all cases be written in durable ink, and, when completed, the permit will be immediately returned to the manufacturer. Future like withdrawals may be made under such permit until the charges entered thereon equal the full quantity of alcohol for which such permit was issued; and any delivery of alcohol in excess of that quantity will work a forfeiture of the bond of the denaturer or dealer making such delivery.

ART. 5. After the full quantity of alcohol covered by any permit has been obtained, the manufacturer, on surrendering such permit to the collector, may receive from that officer a renewal permit covering the available balance under the bond given—*i. e.*, the full quantity covered by the bond less the quantity already withdrawn and remaining unaccounted for.

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ART. 6. An account will be kept with each bond given, as provided in article 82 of Regulations No. 30; but collectors will not hereafter be required to certify ascertained balances to other collectors or to the Commissioner of Internal Revenue. Nor will manufacturers hereafter be required to provide separate tanks or render separate transcripts (Form 567) for alcohol received from different denaturers or dealers. A full transcript (Form 567), however, should be furnished the collector monthly, and when verified will be forwarded to the commissioner for review.

ART. 7. The foregoing regulations will take effect August 1, 1913, and, so far as applicable, are hereby extended to bonded dealers in specially denatured alcohol upon the execution by such dealers of a general bond (Form 653A) hereby prescribed for that purpose. Such bond, however, will, as in case of the bond (Form 653) heretofore required, be limited to alcohol obtained directly from denaturers and shipped by the dealer directly to manufacturers authorized to receive the same.

W. H. OSBORN, *Commissioner.*

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1861.)

Denatured alcohol.

Authorizing formula for special denaturants for use in the manufacture of lacquers for food containers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 23, 1913.

SIR: This office is in receipt of application, Form 581, and bond, Form 582, of the ——— company, of your district, for specially denatured alcohol to be used in the manufacture of lacquers for food containers, and the same are hereby approved.

The application of the ——— company for permission to use formula No. 16, "to 100 gallons of ethyl alcohol add 5 gallons of commercially pure methyl alcohol and 2 gallons of benzol," is approved, and its use in the manufacture of lacquers for food containers is hereby authorized.

Respectfully,

W. H. OSBORN,
Commissioner.

COLLECTOR FIFTH DISTRICT, *Newark, N. J.*

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(T. D. 1862.)

Spirits in warehouse.

Unofficial gauging to be done by United States officers or by the distiller or his employee. Supervision of warehouse by officer on duty thereat.—T. D. 1814, of November 15, 1912, modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 23, 1913.

To collectors of internal revenue:

The requirement of T. D. 1814 of November 15, 1912, that commercial or unofficial gauges of spirits in bonded warehouses must be made by a United States gauger or storekeeper-gauger is hereby modified so as to allow such gauges to be made either by a United States gauger or storekeeper-gauger or by the distiller or his employee, at the distiller's expense, but only after permission has been granted in writing by the collector of the district in which the warehouse is located.

A mere inspection of the cooperage or the ascertainment of the outage and proof of certain sample packages is not regarded as a gauge, and the distiller may have access, under proper conditions, to the spirits in bond for such purpose, or for the purpose of repairing cooperage, or to take any required measures to prevent waste or leakage, or for other necessary purposes, as set forth on pages 34 and 35 of Regulations No. 7, Revised September 16, 1908.

With regard to the paragraph numbered 2 in T. D. 1814 it may be said that the same was prepared with special reference to cases where the distillery warehouse consists of a single building, rendering a literal compliance therewith practicable. But even in such case the constant personal presence of the officer at or in the warehouse will not hereafter be insisted on, provided the officer exercises a careful supervision of the warehouse and its contents by remaining therein when other duties permit, and when necessarily called to other portions of the distillery premises by returning to the warehouse at such brief intervals as shall enable him to keep practically a continuous oversight of the operations of the distiller or other persons having business in the warehouse.

Where the distillery warehouse consists of several buildings and it is necessary for the distiller to have access to two or more of them at the same time a like application of this regulation with respect to the personal presence of the storekeeper or storekeepers at or in the open warehouses should be made, and the officer should exercise the same supervision of the warehouses and their contents as above recited in case of a single building.

It will be understood, however, that there is no intention to modify the rule requiring the immediate personal presence of the storekeeper when spirits are being entered or withdrawn, nor to

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relax in any manner that strict and proper oversight of distillery warehouses which it is the manifest intention of the law to have maintained. Officers charged with the care of such warehouses will be expected and required to exercise good sense, care, and diligence in the discharge of their duties in this respect.

All regulations inconsistent herewith are hereby revoked as of date July 15, 1913.

Collectors will be furnished with copies hereof on requisition and will supply a copy to each gauger, storekeeper, and storekeeper-gauger and to each distiller in their respective districts.

W. H. OSBORN, *Commissioner.*

(T. D. 1863.)

Special excise tax on corporations.

A corporation organized under the laws of the State of New Jersey, but doing business in Cuba, liable to tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 26, 1913.

SIR: This office is in receipt of your letter of the 23d instant, in reference to the case of ——— ———, organized under the laws of the State of New Jersey, but doing business in Cuba.

An assessment of corporation excise tax, amounting to $———, was made against the company on the April, 1912, list, which it refused to pay, alleging under advice of counsel that because its business was transacted in a foreign country and it had no assets in this country, its property being within the jurisdiction of the Republic of Cuba, its stockholders living there, and its income being spent and nvested there, it was not liable for the tax assessed.

This office proposed to test this question and to ascertain whether a corporation organized under the laws of this country and enjoying the protection granted by our laws could evade the taxes which the law imposes.

This office is gratified to learn from your letter that the company has receded from its position, and has made payment to you of $———, covering the tax for the years 1909, 1910, and 1911, with 50 per cent additional tax, 5 per cent penalty, and interest to date.

Your recommendation that the action instituted against this corporation be discontinued upon the payment by them of the costs incurred is approved, and the United States attorney will be instructed accordingly.

Respectfully, W. H. OSBORN, *Commissioner.*

COLLECTOR OF INTERNAL REVENUE,
Newark, N. J.

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(T. D. 1864.)

Excise tax on corporations—Decision of court.

1. PENALTY CONSTITUTIONAL.

The penalty of from $1,000 to $10,000 for failure to make return, as prescribed by section 38, act of August 5, 1909, is constitutional.

2. EFFECT OF ACCEPTANCE OF RETURN.

The acceptance of a return by the Commissioner of Internal Revenue is not a waiver of the penalty.

3. CONSTRUCTION OF THE ACT.

Penalties for delay are a necessary incident to procuring revenue and should receive an impartial, if not a sympathetic, interpretation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 30, 1913.

The appended decision of the United States District Court for the Southern District of New York, in the case of United States *v.* Surprise Five, Ten, and Nineteen Cent Store, is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN, *Commissioner.*

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

United States of America v. *Surprise Five, Ten, and Nineteen Cent Store.*

HAND, *District Judge:* This case raises the question of the meaning and constitutionality of the eighth paragraph of section 37 of the Payne-Aldrich tariff bill levying an excise tax on corporations. The section is as follows:

> If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

As to the constitutionality of the act the only suggestion is that it makes reasonable contest impossible because of the penalties imposed for disobedience. Cases like *Ex parte* Young (209 U. S., 123) must not be pressed too far. In that case the penalties were not less than $5,000 for every passenger carried at more than 2 cents a mile. By the time the cause could be finally determined the aggregate of fines would have destroyed the carrier. The court thought the measures actually operated—and perhaps were designed—to prevent any contest. The penalties here are not disproportionate to an enforcement of the act and the minimum not unreasonable for an honest contest if it involves substantial interests.

The real question is whether the penalties are remitted if the commissioner accepts the return after the date fixed in the statute. I think that the statute intends the commissioner to accept the return whenever filed, at least for a period of three years. If so, of course it can not be an excuse to file it after the proper date, else the section would be nugatory as a means of compelling compliance with the substantial scheme of the act. My reason for believing that the commissioner is to receive the return whenever filed is that under the fifth paragraph, if the return be fraudulent or if the

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corporation neglect to file the return, he shall assess the tax together with a surtax. Now it would be absurd to suppose that since he is in such a case to assess the tax and a surtax, he is bound not to accept the return, which is the best means of assessment. It is true that he had powers to investigate and make his own return, but these are for use when there is no return. The result would be that the commissioner would have to choose between foregoing the most convenient means of assessing tax and surtax or the penalties themselves. He certainly has no such alternative.

Moreover, this is a revenue act, and though these are penalties the court ought not to look about too curiously after constructions that impair the sanction of the plan. Taylor *v.* United States (3 How., 197–210). Penalties for delay are a necessary incident to procuring the revenue of the Govenrment, and should receive an impartial, if not a sympathetic, interpretation. In the case at bar there is no reason, however, for more than the minimum penalty, and judgment will therefore go for $1,000 and costs.

(T. D. 1865.)

Special excise tax on corporations.

Interest paid on mortgage indebtedness deductible as rental or franchise payment only when made as a necessary condition to the continued possession and use, and not as incidental to the ownership of the mortgaged property.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 14, 1913.

SIR: The claim of the ——— company for the refunding of special excise tax for 1912 has been examined in this office, and is hereby rejected for the reason that the tax appears to have been legally collected.

This claim is based upon T. D. 1742, paragraph 50, which holds that where interest is paid on mortgage indebtedness merely as a condition to the possession or use of mortgaged property it may be deducted from gross income under item 4 on the return as a general expense.

This decision is an interpretation of that phrase in paragraph 2, section 38, act of August 5, 1909, which provides for the deduction from gross income as expense of "all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property." The Treasury Decision does not extend or modify this provision; it merely interprets it in a particular instance, and it can not be extended or used to justify the deduction from gross income as expense of interest paid on mortgages, except where such interest is a mere rental or franchise payment made as a necessary condition to the use or retention of property and not as an essential to the ownership of purchased property the title to which has been, or upon satisfaction of liens will be, vested absolutely in the purchaser.

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As said by the Attorney General in opinion dated February 21, 1910—

It surely can not be assumed that Congress, having specifically set a limitation to the amount of interest upon the indebtedness of the corporation which may be deductible from its gross income, in reaching the measure of the tax under this law, left the way open in the first clause of section 38 to eliminate the limitation imposed by the third; so that if in any of the cases suggested the indebtedness secured by mortgage upon the properties acquired by the respective corporations shall have been assumed by them, and has thereby become their indebtedness, interest on such indebtedness can be deducted only to an amount not exceeding the interest on the paid-up capital stock of the respective corporations.

Wherever, therefore, a corporation purchases property encumbered by mortgage or other lien, and the amount of such mortgage or other lien is a part of and included in the purchase price, upon the payment of which the title vests absolutely in the corporation, it is manifest that, for the purposes of this act, the purchaser assumes the indebtedness of its property thus purchased. Interest paid in such cases is upon indebtedness and partakes in no degree of the nature of rental or franchise charges, and its deduction is limited by the provision of the law.

In the case of the claimant it appears that the corporation owns an interest in the mortgaged properties, that this interest is liable to be destroyed by the foreclosure of the mortgage, and that claimant paid the interest primarily for the protection of its own property. Clearly such payments are not in the nature of rentals or franchise charges, and there is no warrant of law for their deduction from gross income as expense.

Respectfully, W. H. OSBORN, *Commissioner.*
COLLECTOR THIRD DISTRICT, *New York.*

(T. D. 1866.)

White phosphorus matches.

Date when act of April 9, 1912, governing manufacture of white or yellow phosphorus matches becomes effective as to registering, filing bonds, notices, etc., and payment of stamp tax on matches containing white or yellow phosphorus.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 21, 1913.

To collectors of internal revenue and others concerned:

This office has recently received inquiries from manufacturers of matches concerning the interpretation of section 17, act of April 9, 1912, with reference to the date on and after which matches made

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of white or yellow phosphorus are required to be tax paid. Section 17 provides:

> That this act shall take effect on July first, nineteen hundred and thirteen, except as previously provided in this act; and except as to its application to the sale or removal of white phosphorus matches by the manufacturers, as to which it shall take effect on January first, nineteen hundred and fifteen.

The first clause of this section is construed by this office to mean that all of the provisions of the law requiring registering, filing of bonds, notices, and monthly returns by manufacturers became effective July 1, 1913, and the exception in this clause relates to importations and exportations which are prohibited on and after January 1, 1913, and January 1, 1914, respectively; and the last clause of this section to mean that manufacturers are permitted to continue the use of white or yellow phosphorus in the production of matches and sell or remove such matches without payment of stamp tax and affixing caution notice and factory number on the packages until January 1, 1915.

Therefore, all manufacturers in your district should be so informed and advised that upon registering, filing of bonds, notices, etc., they will be permitted to continue the use of white or yellow phosphorus in the production of matches without involving themselves in liability to stamp tax on any of the matches manufactured and sold or removed prior to January 1, 1915.

W. H. Osborn, *Commissioner.*

(T. D. 1867.)

Changes in internal-revenue agents force.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., August 4, 1913.

The following changes in the force of internal-revenue agents will be made, effective August 4, 1913:

James W. McGinnis will be assigned as Chief of Internal Revenue Agents, this bureau.

George W. Trowbridge will be placed in charge of the division comprising the first, ninth, and twenty-third districts of Pennsylvania and the first district of New Jersey, with headquarters at Philadelphia, Pa.

Edward C. Yellowley will be placed in charge of the division comprising the districts of North and South Dakota, Minnesota, first and second Wisconsin, and the Northern Peninsula of Michigan, with headquarters at St. Paul, Minn.

W. H. Osborn, *Commissioner.*

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(T. D. 1868.)

Exportation of domestic spirits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 1, 1913.

To collectors of internal revenue:

In view of the fact that entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and the age of such spirits, collectors of internal revenue with whom export withdrawal entries are filed are hereby authorized to furnish the exporter with a certificate, under seal, showing the origin and age of the spirits described in such entry for withdrawal, so far as may be determined from the marks and brands on the packages containing the spirits. Such certificate will be in the following form:

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, —— DISTRICT OF ——,
——, 191-.

This certifies that there has been withdrawn from bonded warehouse in this district, for exportation to ——, the following described distilled spirits; and that the said spirits, according to the marks and brands on the packages, are of the origin and are as below given:

Serial Nos. packages.	Kind of spirits.	Name of distiller.	State and district.	Date of production.[1]	Taxable proof gallons.

[1] Original gauge.

[SEAL.]

—— ——,
Collector.

Until blank forms of this certificate are furnished. typewritten forms may be used.

W. H. OSBORN. *Commissioner.*

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1869.)

Restamping of spirits, tobacco, cigars, snuff, cigarettes, fermented liquor, oleomargarine, and denatured alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 5, 1913.

To collectors of internal revenue and others concerned:

1. Section 3315, Revised Statutes, as amended by the act of March 1, 1879, provides that the "Commissioner of Internal Revenue may,

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under regulations prescribed by him, with the approval of the Secretary of the Treasury, issue stamps for restamping packages of distilled spirits, tobacco, cigars, snuff, cigarettes, and fermented liquors which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident."

2. Section 8, act of August 2, 1886 (24 Stat., 210), as amended by section 3, act of May 9, 1902 (32 Stat., 193), provides with respect to oleomargarine stamps that "the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section."

3. The following regulations are prescribed in pursuance of the authority conferred by the sections above quoted:

APPLICATIONS.

4. Applications for restamping should be made in writing to the collector of internal revenue for the district in which the packages to be restamped are situated. Applications should state in detail the number of packages, description of the contents, where the packages are located, the kind and denomination of the stamps lost or destroyed, and the nature of the applicant's interest in the property.

5. If the stamps were lost or destroyed in transit, the application should be accompanied by an affidavit of the consignor that the packages were properly stamped when shipped and the affidavit of some one having knowledge of the facts attending the destruction en route.

6. If the stamps were lost or destroyed either before or after shipment and while in the possession of the applicant, the application should be accompanied by the affidavit of the applicant or some one in his employ stating that the packages were once duly stamped or properly stamped when received, as the case may be, and detailing all the circumstances connected with the destruction of the stamps.

INSPECTION.

7. When an application is received, the collector will examine it and the accompanying affidavits to see that all the papers are properly prepared and will order an immediate inspection of the packages by one of his deputy collectors, who will make a written report to the collector of the number of packages which require restamping, the condition and contents of each, and the kind of stamps or fragments of stamps remaining attached.

8. In the case of spirits other than denatured alcohol the inspection should be made by a gauger, if possible, otherwise by a deputy collector.

9. If this inspection can not be made without expense to the Government, the collector will, before expenses are incurred, forward the application and accompanying papers and an estimate of the cost of completing the examination.

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SPIRIT STAMPS.

10. *Regauge.*—In the case of spirits other than denatured alcohol a full report of regauge on Form 59 and a statement of the marks and brands found upon the bung stave and stamp head of the packages must be made by a gauger, when possible, otherwise by a deputy collector.

11. If it is impossible to make an inspection and regauge without expense to the Government, the collector may, with the owner's consent, permit the spirits to be drawn off into packages of less than 5 wine gallons capacity and report his action to the commissioner, provided he is satisfied that the spirits have been tax paid. If, however, the owner is unwilling to do this, the collector will submit all the papers in the case to the Commissioner of Internal Revenue with an estimate of the cost of having a gauger make a special trip to inspect and regauge the spirits.

12. Where division deputies are about to visit localities in which packages requiring restamping are situated, they should be instructed to make inspections and regauges, so that the expense and delay which would be occasioned in asking the commissioner's authority to detail a gauger for such purpose may be avoided.

ADDITIONAL EVIDENCE.

13. Where spirit stamps have been lost or destroyed, collectors of internal revenue will procure and forward to the Commissioner of Internal Revenue (with the application, report of inspection, and report of regauge) additional evidence as follows, according to the nature of the case:

(*a*) For tax-paid spirits: Certified copy of the report on Form 59 showing regauge of spirits on which tax was paid. Certificate of collector in whose district the spirits were produced as to the payment of tax.

(*b*) For distillery warehouse: Certified copy of the report on Form 59 of the original gauge.

(*c*) For rectified spirits, imported spirits, export distilled spirits, special bonded warehouse, special bonded rewarehousing, general bonded warehouse, general bonded warehouse retransfer, transfer grape brandy, fortified sweet wine, and fortified sweet wine for exportation: Certified copy of the report of the gauger who affixed the stamps.

(*d*) For wholesale liquor dealer and denatured alcohol (W. L. D. package): Certified copy of the application for the stamps (Form 92 or 92½).

(*e*) For denatured alcohol (original package): Certified copy of the report (Form 577) of the gauger who affixed the stamps.

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REPACKING PACKAGES FOR RESTAMPING.

14. Where packages of tobacco, cigars, cigarettes, snuff, or oleomargarine are found to be in such condition that they require repacking before new stamps can be attached, the deputy collector will in such cases include in his report of inspection the exact number, denomination, and class of stamps to be used.

15. If the collector is satisfied that the packages were once duly stamped and there appears to be no evidence of fraud, he will authorize their immediate repacking in new packages not before used for that purpose and of a size to contain a statutory quantity or number of articles, under the supervision of a deputy collector. The packages will then be held until the collector is authorized to issue the required stamps, which must be attached to the package under the supervision of a deputy collector.

16. The work of repacking and restamping these packages must not be done within the factory premises of any manufacturer of articles subject to internal-revenue taxes.

FERMENTED LIQUOR, ETC.

17. In the case of fermented liquors, upon the receipt of the application and affidavit of tax payment and loss of stamps, and after report of inspection by a deputy collector, the collector may, if the evidence is satisfactory, issue the stamps necessary to replace those lost or destroyed, such stamps to be affixed to the proper packages under the direct supervision of a deputy collector.

18. All the papers in each case will be transmitted to the Commissioner of Internal Revenue with the collector's monthly report on Form 68, accompanied by a statement containing the names of persons to whom fermented liquor stamps have been issued for restamping, and stating the number, denomination, and value of stamps issued in each case.

CREDIT FOR STAMPS ISSUED.

19. Record of the issuance of all stamps under the provisions of this circular should be made in the appropriate monthly record of stamps received, issued, etc., in column headed "issued by order of the commissioner," and credit for said stamps should be taken on the proper collector's monthly report (Form 68 or 177, on line 10).

20. In every such case the collector will obtain a receipt from the person receiving the stamps so issued and transmit such receipt, together with the other papers, with his report on Form 68 for the month in which the stamps were issued.

W. H. OSBORN, *Commissioner.*

Approved:

W. G. MCADOO,

Secretary of the Treasury.

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(T. D. 1870.)

Form 122.

Stamp numbers of spirit packages dumped at the same rectifying house where previously filled within 30 days to be entered on Form 122 in red ink.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 13, 1913.

To collectors of internal revenue and to rectifiers and gaugers assigned to rectifying houses:

On and after September 2, 1913, rectifiers will be required to enter in red ink in column 3 of Form 122 the stamp number of each package of rectified spirits listed for dumping which was filled at the same rectifying house within 30 days previous to the date of the Form 122. All other entries on the Form 122 are to be made in some other color than red. Failure on the part of rectifiers to observe this requirement will result in the return of the form to the rectifier for correction, and collectors are hereby required to take such action in all such cases.

Extra copies hereof will be furnished collectors on their requisition therefor for delivery to each rectifier and gauging officer assigned to rectifying houses in their respective districts.

W. H. OSBORN, *Commissioner.*

Approved:
JOHN SKELTON WILLIAMS,
Acting Secretary of the Treasury.

(T. D. 1871.)

Adulterated butter—Charge of court.

1. TAX ON ADULTERATED BUTTER.

The law imposing a tax on adulterated butter and special tax on manufacturers of adulterated butter is a revenue measure solely.

2. ADULTERATED BUTTER DEFINED.

Under the regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, butter having 16 per cent or more of moisture contains an abnormal quantity and is adulterated butter.—Decision by Circuit Judge Lurton, now Mr. Justice Lurton, of the United States Supreme Court, in Coopersville Cooperative Creamery Co. *v.* Lemon, Collector (163 Fed., 145; T. D. 1371), followed.

3. REGULATIONS.

A regulation of the Treasury Department, defining what shall be held as an abnormal quantity of moisture, has the force and effect of law.

4. SAMPLES.

The instructions of the Internal-Revenue Bureau relative to taking samples (T. D. 1449) are directive and merely for the guidance of officers and employees in the Internal-Revenue Service engaged in taking samples. Samples must be taken fairly and in such a manner as to be representative of the contents of the tubs from which they are taken.

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5. MANUFACTURER OF ADULTERATED BUTTER DEFINED.

Anyone who engages in the manufacture of adulterated butter is a manufacturer, no matter how much or how little he manufactures, and is subject to the tax prescribed,

6. EVIDENCE.

In a suit against the collector to recover the tax paid, the jury is to determine whether or not the preponderance of evidence shows that the product upon which the tax was levied was not adulterated butter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 22, 1913.

The appended charge to the jury by Judge William L. Day, United States District Court, Northern District of Ohio, Eastern Division, in the case of Ohio Creamery and Supply Co. *v.* Rodway, Collector, is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN, *Commissioner.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

Ohio Creamery and Supply Co. v. *Rodway, Collector Eighteenth District of Ohio.*

CHARGE OF COURT.

DAY, *District Judge.* Gentlemen of the jury: The Ohio Creamery and Supply Co. brings this action against A. N. Rodway, United States collector of internal revenue for the eighteenth district of Ohio, to recover taxes paid under protest, which the plaintiff alleges were illegally levied.

Inasmuch as the product upon which these taxes were levied is claimed to be what is known as "adulterated butter," I am not going into the details of what constitutes adulterated butter at this time, nor the details of levying the internal-revenue tax upon that product, but will for your information dwell upon one particular feature in connection with adulterated butter, which I consider of some importance, later in my charge, as I consider that it will only be necessary for me to submit a very simple issue for you gentlemen of the jury to determine, and thus eliminate as much detail as possible.

I suppose you, as men of affairs, are all familiar with the fact that in order to pay the expenses of the Government it is necessary to levy taxes, and one particular branch of taxation by which revenue is raised to pay the expenses of the Government is by the process known as internal-revenue taxation, and one of the subjects of taxation, under our internal-revenue system, is the dealing in and manufacturing renovated and adulterated butter, and is a revenue measure solely, by which the Congress has seen fit to impose a tax of one-quarter of a cent per pound upon renovated butter and 10 cents a pound upon adulterated butter, and has also seen fit to charge the manufacturer of renovated butter $50 a year and the manufacturer of adulterated butter $600 a year for the privilege of making such butter.

Now, then, whatever we may think of the wisdom of Congress in passing these laws and measures is of no moment here; it is the law, and as such must be followed. The manufacturer of adulterated butter must pay what might be termed a license tax of $600 a year and 10 cents a pound for every pound of such butter he manufactures.

Now, in this present case, it is claimed that this tax was levied upon a product which was not adulterated butter, and in order for the plaintiff to maintain his case

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here he must show by a preponderance of the evidence that the product upon which this tax was levied was not adulterated butter. By a preponderance of the evidence I mean the greater weight of all the evidence in this lawsuit.

Now, gentlemen, at the outset it is most important that we have a distinct understanding of what adulterated butter is.

Congress has defined that term, and Congress says that—

Adulterated butter is hereby defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as herein defined, with intent or effect of cheapening in cost the product.

And this applies particularly to the product in this case. And then the section of the act goes on to say:

Or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

Now, then, the Treasury Department of the United States has seen fit to define what shall be held as an abnormal quantity of moisture and they have made a regulation to that effect, which has the force and effect of law, and which fixes the standard of absorption to determine whether or not the product is adulterated butter or not, and it is held that butter having 16 per cent or more of moisture contains an abnormal quantity, and is classed as adulterated butter, so that the question, then, for you to decide ultimately, gentlemen, is whether or not this butter upon which this tax was levied or any part of it contained 16 per cent or more of moisture.

Now, there has been offered in evidence a rule or regulation, or decision, more properly speaking, of the Internal Revenue Department, known as rule 1449, which directs or designates the method of taking samples of and from adulterated butter and renovated butter, and it prescribes that the samples so taken shall be wedge-shaped; one from the top, one from the bottom, and from the opposite sides of the tub or receptacle in which the butter is contained. Now, that rule is not mandatory. It is a directory rule merely of the department for the guidance and instruction of the men engaged in this work of taking these samples employed in the Internal Revenue Department of the United States; it is a rule merely for the guidance, gentlemen, of those engaged in this department of the Government in taking these samples, so that the only question for you to decide in this case is, as I have said before, whether or not this product contained 16 per cent or more of moisture.

Now, in taking these samples, gentlemen, they must be taken fairly and obviously in such a manner that the samples so taken are a fair representative of the contents of tubs from which they are taken; that is all that is required, and that is all that is necessary.

Now, gentlemen of the jury, this tax was levied in its several details upon this butter in question, and it appears from the evidence that there were seventeen packages involved. There were fifteen 33-pound packages and two 60-pound packages, and on these a tax was levied of 10 cents a pound, which in the aggregate amounted to some $62, and another tax was levied upon the right to manufacture adulterated butter.

Now, every person under the law who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof; so that anyone who engages in the manufacture of adulterated butter is manifestly a "manufacturer" under the definition of this act; no matter how

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much or how little he manufactures, he is a manufacturer and subject to pay the tax prescribed by the act, so long as the manufacturing such butter as a business is followed by him.

Now, then, gentlemen, the different details of taxation, the manner in which the tax is levied, the forms prescribed for so doing, and all the details in connection therewith which have been called to your attention by the witnesses, I think you can recollect. You must consider these facts and circumstances in connection with all of the other evidence in the case and then determine whether or not the plaintiff has shown by the greater weight of all the evidence that the tax was faultily levied in this case and that the product upon which it was so levied was not manufactured or adulterated butter, and that this butter so manufactured did not contain 16 per cent or more of moisture, and if you so find and conclude, then your verdict must be for the plaintiff.

You have heard the witnesses testify; you are the judges of their credibility; you can figure their interest, their knowledge and experience, and you will give their testimony such weight as you consider it is entitled to.

(T. D. 1872.)

Substitution.

Compromises not to be accepted hereafter in substitution cases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 26, 1913.

To collectors of internal revenue:

The practice which has prevailed in this office for some years past of accepting compromises of $25 per package for the release of packages of spirits seized as substituted does not appear to have had a very marked effect in stopping the practice, and I have therefore decided to adopt more drastic measures.

Hereafter compromises will not be accepted for the release of double-stamped packages of spirits pronounced by the chemist of this bureau to contain spirits other than that tax-paid therein, unless the circumstances are exceptional, and then only in an amount not less than the full value of the packages seized, including tax thereon.

As a rule packages seized as substituted should be promptly advertised and sold under the provisions of section 3460, Revised Statutes, unless the value of the seizure, not including the tax, is more than $500, in which case the goods should be turned over to the United States marshal, as provided by regulations.

In reporting the seizure of such goods on Form 117 you are requested to state the estimated value, not including the tax, and the amount of tax on the spirits contained in the packages as separate items.

W. H. OSBORN, *Commissioner.*

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(T. D. 1873.)

Compensation of posse men and informers.

1. Posse men's compensation per day: Minimum, $3; maximum, $5; which sums shall include necessary expenses. They can not be paid for more than one day for services rendered within one calendar day. Subject to such restriction, 12 hours or less continuous service constitutes one day and every hour in addition one-twelfth of a day.

2. Informers on stills to be paid fees based upon capacity of stills, ascertained by actual measurements and material of which made.

3. Informers on complete distilleries containing a still or stills of aggregate capacity of not less than 50 gallons, ascertained by actual measurements, to be paid a fee of $50 in each case after conviction of proprietor or operator. In such cases no additional informers' fees on account of the stills in the complete distilleries will be allowed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 21, 1913.

To internal-revenue agents and others concerned:

The following regulations are prescribed to govern the payment of posse men and informers, except those of the class of informers whose compensation is fixed by Internal-Revenue Circular No. 99, fourth re sion, dated December 18, 1899:

1. Not more than $5 will be allowed a posse man for services, including all expenses, rendered within 1 calendar day, from midnight to midnight, nor will allowance be made for a greater number of days' pay for continuous active service than the number of calendar days within which such service is rendered. Subject to this restriction, where the work extends over portions of 2 calendar days, continuous active service for 12 hours or less will be considered 1 day, and each hour in excess of 12 will be counted as one-twelfth of a day. Fractions of an hour less than one-half will be disregarded, and one-half hour or more will be accounted for as one hour.

2. The rate will be $3 a day for continuous service of 12 hours or less, and in addition such necessary actual expenses as may be incurred during such period for subsistence and transportation, all to be considered as compensation, but in no event to exceed the maximum of $5 per day for both services and expenses.

3. Illustration: From 12 midnight of a Monday until 12 midnight Tuesday is 1 day; from 12 midnight Monday to 12 midnight Wednesday 2 days, even if continuously on duty.

From 6 p. m. Monday until 12 noon Tuesday will be counted as 1½ days. When more than 12 hours' service is rendered within a calendar day and payment can be made for but 1 day, 12 hours will be the basis upon which to compute, as shown in "Example" under paragraph No. 4.

In further illustration please note the following:

From 11.30 Monday night to 3 a. m. Tuesday would be regarded as 1 day. From 11.30 Monday night to 11.30 a. m. Tuesday would

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be regarded as 1 day. From 11.30 Monday night to 12 noon Tuesday would be regarded as $1\frac{1}{12}$ days. From 11.30 Monday night to 8 p. m. Tuesday would be regarded as $1\frac{9}{12}$ days. From 8 p. m. Monday to 8 p. m. Tuesday would be counted as 2 days. From 12 noon Monday to 12 noon Tuesday would be counted as 2 days. From 12 noon Monday to 12 night Tuesday would be counted as 2 days. From 12 noon Monday to 8 a. m. Tuesday would be counted as $1\frac{8}{12}$ days.

4. Examples: A posse man was actively employed from 8 a. m. until 11 p. m. the same day, or 15 hours. This is during 1 calendar day and should be so reported, but the compensation would be $3.75 the equivalent of $1\frac{1}{4}$ days' service—1 day of 12 hours and three-twelfths of a day. In addition, expenses could not be allowed in excess of $1.25 to keep within the maximum of $5.

From 6 p. m. until 12 noon the following day would, when actively employed during the interval, be $1\frac{6}{12}$ or $1\frac{1}{2}$ days, with compensation of $4.50, plus actual necessary expenses to make a total, including services and expenses, of not more than $7.50, being at the rate of $5 per day.

"Actively employed" means on actual duty and *does not include time spent in sleep*, but does include actual time properly spent in going to and returning from the scene of action.

5. A posse man using his own horse may be allowed not in excess of $1 per full day for its use. When livery is hired, and when other expenses are incurred, except travel by public conveyance, vouchers should be filed with the memorandum Form 10 retained by the revenue agent, provided the amount paid to any one person at one time is in excess of $1. All expenses incurred by posse men should be itemized in the letter report of the revenue agent.

6. T. D. 1513, dated June 24, 1909, is hereby modified as indicated.

7. The following scale, covering fees of informers on stills and other personal property, is prescribed:

$10 (1) for a copper still of not less than 35 gallons capacity.
(2) for a still other than copper of 60 or more gallons capacity.

$7 (1) for a copper still of capacity of 25 to 35 gallons.
(2) for a still other than copper of capacity of more than 25 and less than 60 gallons.

$5 or less for a still of any material of capacity of less than 25 gallons, amount of fee to be left to the discretion of the revenue agent submitting the claim, but not to exceed $5.

8. The provisions of Internal-Revenue Circular of March 10, 1875, are hereby modified in the following particulars:

A fee of *$50* will be paid to persons other than officers or employees in the Internal-Revenue Service for information that shall lead to the seizure of a distillery containing one or more stills of an aggregate capacity of not less than *fifty* gallons, the proprietor of which dis-

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tillery had not given the notice required by law, and which information shall also lead to the conviction of the proprietor thereof or of anyone operating such distillery.

This reward will be promptly paid upon the close of a case resulting in the seizure of a distillery of the class described and conviction of proprietor or operator.

The *certificates* of the *district attorney*, the *collector of internal revenue* for the district within which the distillery was situated, and the *revenue agent* cognizant of the facts, as to the character of the information and of the proceedings taken thereon resulting in the seizure and conviction as hereinbefore provided, may be presented as evidence of the facts in any claim made hereunder. Such claim to be sent to the Commissioner of Internal Revenue for payment by direct settlement.

9. *In reporting the capacity of a still, the mean diameter in inches will be given, followed by the depth in inches, after which the capacity in gallons will be stated.*

Example: Mean diameter, 20 inches; depth, 30 inches; capacity, 40.8 gallons. The capacity in this example is determined as follows: Square the diameter (20 inches) which gives a product of 400. Multiply this product by 0.0034, and the product thus obtained will be 1.36 gallons, the number of gallons for 1 inch in depth. Multiply this product by the number of inches in depth and the final product will be the capacity in gallons.

10. When fee is claimed for information leading to the *seizure of whisky*, it should be for an amount not in excess of *ten cents per gallon*, and claim for same may be made at once. When for other personalty no claim for fee should be made until the property shall have been sold and the proceeds paid into the United States Treasury. The fee in such cases will under no circumstances exceed *ten per cent* (10%) of the value of such personalty and may be less, dependent upon facts and conditions as may be recommended.

11. Bills submitted by posse men, guides, and informers (except the informers mentioned in the introductory paragraph and paragraph 8 of these regulations) on Form 10 should be forwarded to the Commissioner of Internal Revenue for approval before payment by the revenue agent.

12. All field officers and employees and collectors of internal revenue are requested to *promptly* familiarize themselves with *all* the provisions of these regulations.

13. All regulations and instructions in conflict herewith are hereby repealed.

W. H. Osborn, *Commissioner.*

Approved:

W. G. McAdoo,

Secretary of the Treasury.

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(T. D. 1874.)

Oleomargarine.

Modification of Regulations No. 9, concerning oleomargarine, etc., to permit the incasing or wrapping of original packages in additional containers for transportation by parcel post to comply with regulations governing shipments through the mails.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 25, 1913.

To collectors of internal revenue and others concerned:

For the purpose of complying with the conditions prescribed by the regulations governing the transportation of merchandise by parcel post, Regulations No. 9, Revised July, 1907, concerning oleomargarine, adulterated butter, and process or renovated butter, are hereby modified in respect to original packages as follows:

Manufacturers or wholesale dealers are permitted to incase wooden original packages, bearing caution notice and proper tax-paid stamp, in an additional covering or wrapper or shipping container, as prescribed by sections 22 and 34 of parcel post regulations of January 1, 1913, and as subsequently modified:

Provided, That such additional covering, wrapper, or shipping container has impressed or stenciled thereon the manufacturer's brand, as prescribed for original packages, and the additional inscription: "The original package herein contained has been duly tax paid and proper stamp is affixed," is also durably impressed or stenciled on the outer covering in legible letters not less than one-half inch square.

This modification applies only to original packages falling within the weight limit of the parcel post regulations and which are shipped by mail.

Any previous rulings with respect to incasing original packages of oleomargarine, adulterated butter, and renovated butter in conflict with the above are hereby revoked.

W. H. OSBORN, *Commissioner.*

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1875.)

Use by cigar-factory employees of tax-free cigars for personal consumption.

Regulations governing the use by employees of manufacturers of cigars of not to exceed 21 cigars per week, exempt from being packed and stamped, under act of February 10, 1913, amending section 3392 of the Revised Statutes.

TREASURY DEPARTMENT, *August 28, 1913.*

The act approved February 10, 1913, amending section 3392 of the Revised Statutes, provides:

* * * That each employee of a manufacturer of cigars shall be permitted to use, for personal consumption and for experimental purposes, not to exceed 21 cigars per week without the manufacturer of cigars being required to pack the same in boxes or to stamp or pay any internal-revenue tax thereon, such exemption to be allowed under such rules and regulations as the Secretary of the Treasury may prescribe.

Each employee of a manufacturer of cigars is by this act permitted to use *for his own personal consumption* and *for experimental pur-*

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poses not to exceed 21 cigars per week without the same being packed in boxes and stamped. Such use of cigars will not be restricted to the bonded factory premises. If the number of tax-free cigars to which an employee is entitled is not taken by him each week, the number of cigars not so taken will not be allowed to accumulate in the hands of the manufacturer, nor will they be allowed to be taken later, nor will credit therefor be allowed in the manufacturer's account for a subsequent period. Tax-free cigars furnished to or taken by employees for personal consumption and for experimental purposes will not, after they have been so taken or furnished, be permitted to be commingled with the manufacturer's stock of cigars on hand. An employee will not be permitted to accumulate such cigars within the bonded-factory premises. The law restricts the use of tax-free cigars to the employee individually; therefore an employee will not be permitted to take tax-free cigars and give them away. Cigars found in the hands of a person other than an employee of a manufacturer of cigars not packed in boxes, properly labeled, branded, and stamped, are subject to forfeiture under section 3398 of the Revised Statutes.

The manufacturer of cigars at the close of each day, in addition to the other requirements of the laws and regulations, shall enter in separate columns in his book 73, first, the total number of tax-free cigars furnished to or taken by his employees, including cigar makers, that day, for personal consumption and for experimental purposes; second, the total number of employees, including cigar makers, who were furnished or who have taken tax-free cigars; third, the number of cigar makers only who were furnished or who have taken such cigars; and, fourth, the total number of cigarmakers employed.

Until Form 73 of cigar manufacturers' book is revised, manufacturers will make the above report in columns not otherwise used or in columns ruled in the margin or by subdividing others, each being appropriately headed. If the column "Removed in bond for export" is not used for the purpose originally intended, it should be used with proper change in heading for reporting the number of cigars furnished to or taken by employees under authority of the act above mentioned. Every cigar made, including those used tax free for personal consumption and for experimental purposes, shall be reported as manufactured.

Cigar manufacturers' monthly return Form 72, until revised, shall be amended and the number of tax-free cigars furnished to or taken by employees, including cigar makers, shall be entered in the cigar account on line "Removed in bond for export," with appropriate change of said title, or, if that line is regularly used, by interlineation above. The cigar account shall be properly balanced each month. The back of Form 72 shall be ruled, providing columns, each appropriately headed, in which there shall be reported, in the first, the day of the month; in the second, the total number of cigars manufactured; in the third, the total number of cigars removed tax paid; in the fourth, the total number of tax-free cigars furnished employees,

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including cigar makers; in the fifth and sixth, the total number of employees, including cigar makers, and the total number of cigar makers only, respectively, to whom tax-free cigars were furnished; and in the seventh, the total number of cigar makers employed each day, each of said columns excepting the first being totaled.

Strict compliance with the above law and regulations by manufacturers of cigars and their employees will be insisted upon.

The foregoing regulations are hereby prescribed under authority of the act of February 10, 1913.

W. G. McAdoo, *Secretary.*

Illustration of portion of cigar manufacturer's book 73 and monthly return Form 72, showing columns appropriately headed, in which number of tax-free cigars used by employees for personal consumption and for experimental purposes, etc., shall be reported.

Date.	Cigars.			Total number of employees including cigar makers, who were furnished or who have taken tax-free cigars.	Total number of cigar makers only who were furnished or who have taken tax-free cigars.	Total number of cigar makers employed.	
	Manufactured.	Removed, tax paid.	Used for personal consumption and experimental purposes by employees, including cigar makers.				
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30							
31							
Total							

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(T. D. 1876.)

Denatured alcohol.

Authorizing an alternative formula for smokeless powder and extending formula No. 19 to include its use as solvent for nitrocellulose.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 5, 1913.

SIR: In view of representations made by manufacturers to the effect that wood alcohol used as a special denaturant for alcohol to be used in the manufacture of smokeless powder causes instability in certain types of such powder, formula No. 12*a*, 100 gallons of ethyl alcohol, add 5 gallons of coal tar benzol, is hereby authorized as an alternative formula for use in the manufacture of smokeless powder.

Formula No. 19, to 100 gallons of ethyl alcohol add 100 gallons of ethyl ether, authorized for use in the manufacture of artificial silk, and a collodion backing for gelatin films, is hereby extended for use as a solvent for nitrocellulose.

W. H. OSBORN, *Commissioner.*

COLLECTOR, FIFTH DISTRICT, *Newark, N. J.*

(T. D. 1877.)

Cumulative annual leave of storekeepers, storekeeper-gaugers, and gaugers.

Expenses incurred by storekeepers, storekeeper-gaugers, and gaugers by reason of traveling to and from their homes or elsewhere while on leave of absence, must be borne by the officers themselves.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 5, 1913.

To collectors of internal revenue and others concerned:

Attention is invited to the following letter of this office addressed to the Comptroller of the Treasury, through the Secretary of the Treasury, in the matter of traveling expenses of storekeepers, storekeeper-gaugers, and gaugers in going to and returning from their homes when they are granted leave of absence, with pay, and the Comptroller's ruling thereon, which is conclusive and no exceptions can be made thereto:

OFFICE LETTER.

Section 63 of the act of Congress approved August 28, 1894 (28 Stat., 567), as amended by the act of May 13, 1910 (36 Stat., 369), provides:

That storekeepers, storekeeper-gaugers, and gaugers, when traveling to or from assignments, or when transferred from one assignment to another, either in the me district or in different districts, shall receive the same compensation per day

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during the time necessarily occupied in traveling that they would be entitled to if on duty at the place to which assigned or transferred, or from which relieved, together with actual and necessary traveling expenses.

A later act, namely, that of June 23, 1910 (36 Stat., 592), provides:

That storekeepers, gaugers, and storekeeper-gaugers shall be, and are hereby, granted accumulative annual leave of absence, with pay, not to exceed in the aggregate 15 days for any one year: *Provided*, That said leave of absence is so computed as not to exceed 1¼ days for each 26 days said storekeepers, gaugers, and storekeeper-gaugers are actually assigned to duty: *Provided, further*, That such leave shall be operative under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

The question submitted for decision is whether the classes of officers above named should be reimbursed for their actual and necessary traveling expenses in going to and returning from their homes when they are granted leave of absence with pay. Or, in other words, whether such travel is to be considered as travel from one assignment to another within the meaning of the foregoing enactments so as to entitle them to reimbursement for traveling expenses.

COMPTROLLER'S DECISION.

In the decision of this office dated May 15, 1912 (61 MS. Comp. Dec.), in construing the act of June 23, 1910, *supra*, it was said:

The act does not grant pay for leave, but leave with pay (16 Comp. Dec., 789); in other words, the person while taking his leave is in a pay status and may be viewed as being assigned to duty, the actual performance of the duty not being necessary because of the act giving him leave of absence with pay for such time. Any other view would be to put an unreasonable construction on a purely beneficial act.

While under this construction these officers may be viewed as being assigned to duty, yet they are excused from the actual performance of duty during such leave period. Hence, it necessarily follows that any travel performed by them to and from their homes while they are in a leave status is not travel on public business or under competent orders from a superior officer. Nor is it travel from one assignment to another, as the place of assignment apparently is not changed by such leave of absence; they are simply excused from performing duty at such place of assignment while on leave of absence.

You are therefore advised that there is no authority of law for the payment of traveling expenses of the officers mentioned in the foregoing acts for travel performed by them in going to and returning from their homes while on leave of absence.

Under the Comptroller's ruling, officers of the classes named can not be reimbursed their traveling expenses in going to and returning from their homes or elsewhere while on leave of absence, and the provisions of T. D. No. 1718 of August 8, 1911, are hereby modified accordingly.

In the event that an officer does not return to the assignment from which he was relieved to go on leave of absence with pay, but is assigned elsewhere, he would be entitled to reimbursement for no more than his actual necessary expenses would have been in traveling from the place from which relieved to his new assignment. This provision is made because the assignment is not changed by reason of the officer being excused from performing duty while on leave, and any expense incurred in traveling from and returning to place of assignment must be borne by the officer. Example: An officer rendering service on September 1 and 2 was granted leave of absence, with pay, for four (4) days on September 3. He should render voucher for compensation and expenses to September 2 on regular

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voucher, and for September 3 to 6 on a separate voucher marked "Cumulative annual leave," and no expenses on account of such leave must be charged either on the regular voucher or the separate voucher.

This decision is effective to govern in all matters of accounts and vouchers for September, 1913, and thereafter.

Respectfully, W. H. OSBORN, *Commissioner.*

Approved:

WM. G. MCADOO,
Secretary of the Treasury.

(T. D. 1878.)

Laundry charges.

No charges for laundering should be included in the expense accounts of any employees of the field force of the Internal-Revenue Service.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1913.

SIR: Referring to your letter of the 5th instant in regard to laundry charges of employees assigned to duty under your direction, it is noted that you state that Department Circular No. 50, dated October 21, 1912, specifically excepts the field force in the Internal Revenue Service from the regulations contained in the above-mentioned circular governing officers and employees of the Treasury Department and others concerned.

You wish to be advised whether or not you should approve monthly expense accounts of employees under your direction prior to transmitting same to collectors for payment, which contain charges for laundry, supported by the original laundry slips properly receipted.

In reply you are informed that on and after October 1, 1913, no charge for laundering should be included in the expense account of any of the field force of the Internal-Revenue Service, as such expense should be borne by the officer incurring the same.

Charges for laundering which have heretofore been allowed have been passed without authority of specific regulations. As no regulations have been promulgated covering the field force of this service, no revocation is now necessary. This decision is made for your guidance and the letter is being published as a Treasury Decision for the guidance of the entire internal-revenue field force.

Respectfully, W. H. OSBORN, *Commissioner.*

MR. J. O. BENDER,
Internal-Revenue Agent, San Francisco, Cal.

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(T. D. 1879.)

Regulations concerning official telegrams.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 13, 1913.

To collectors of internal revenue, internal-revenue agents, and other officers of internal revenue:

The appended regulations of the Secretary concerning official telegrams is published for your information and guidance.

Respectfully, W. H. OSBORN, *Commissioner.*

REGULATIONS CONCERNING OFFICIAL TELEGRAMS.

TREASURY DEPARTMENT, *August 21, 1913.*

[Department Circular No. 19.]

To all officers and employees of the Treasury Department:

From and after this date official telegrams will be prepared and sent in accordance with the following rules:

(1) Official telegrams originating in the Treasury building will be written on the department telegraph blank (Form 2128) and delivered to the department telegraph office, each message accompanied by a carbon copy. A carbon copy will also be retained in the office where the telegram originates.

(2) Unless otherwise specially ordered, telegrams originating in the different divisions of the Secretary's Office will be signed by the Secretary or an Assistant Secretary; telegrams sent by an officer in the field, or vice versa, shall contain, besides the message, only the surname and official title of the addressee and sender, omitting such portions of title as are unnecessary for identification. Where the official title of an officer sending a telegram is unnecessary, the whole title may be omitted. This regulation shall not apply to the Revenue-Cutter Service.

(3) *All telegrams, except those of a nature sufficiently urgent to demand immediate attention, will be filed for transmission as night messages at night rates, and this will be plainly indicated on the face of the message.* In some instances telegrams sent from the field to the department in Washington, or vice versa, as day messages, are received by the addressee after office hours and not acted upon until the following morning, with consequent needless expense to the Government.

(4) When there is doubt as to the advisability of filing a telegram to a distant point as a night message, consideration will be given to the difference in time (in some cases several hours) between the two points, the length of time, usually an hour or more, required for transmitting and delivering telegrams, and the closing time of the office to which the message is addressed.

(5) As a check against errors or omissions, an addressee, especially an officer in the field, immediately upon receipt of a telegram, will count the words and compare his count with the number entered in the upper margin of the telegraph blank. If a discrepancy appears, request should be made upon the telegraph company for a repetition of the message, without additional cost to the Government. Collect messages show an extra word in the number of words, but this is not billed against the Government.

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(6) Care should be exercised in the preparation of telegrams to omit useless words. *The use of the telegraph will not be permitted when letters will accomplish the same purpose.*

(7) Official telegrams that are not prepaid must be plainly marked "Official business. Collect. Government rate."

All rules in conflict with the foregoing regulations are hereby revoked.

W. G. McAdoo, *Secretary.*

(T. D. 1880.)

Collateral evidence of exportation.

Modifying T. D. 1747, regarding the filing of collateral evidence of exportation of articles under internal-revenue laws.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., September 19, 1913.

Collector of Customs, *New York.*

Sir: In reply to your letter of the 13th instant, relative to the exportation of articles under internal-revenue laws, where, by reason of noninspection of the articles or from other cause the prescribed certificate of clearance can not be issued, you are informed that so much of T. D. 1747 as provides for the filing of collateral evidence of exportation in such cases with the collector of customs is hereby so modified as to permit the filing of such evidence directly with the collector of internal revenue holding the export bond.

W. H. Osborn, *Commissioner.*

Approved:

W. G. McAdoo, *Secretary of the Treasury.*

(T. D. 1881.)

Use of tax-free cigars for personal consumption, etc., where employees work a less period than a full week.

Each employee of a manufacturer of cigars who works less than a full week is held to be entitled to only three cigars per day for each full day actually employed.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., September 24, 1913.

——— ———,

Collector —— *District.*

Sir: This office is in receipt of your letter of the 19th instant, in which, referring to T. D. 1875, you state that the question has arisen whether a manufacturer of cigars, if he chooses, would be allowed to furnish an employee with 21 cigars in any one week should the employee be actually employed a portion of the week only; that is, one, two, or three days, or less than six days, as, you state, is often the case. You ask, also, in case tax-free cigars are not furnished employees nor employees allowed to take them, whether the manufacturer is required to make daily report on Form 72 of the number of

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cigars "manufactured," "removed tax paid," and "total number of cigar makers employed."

You are advised in answer to your first question that while the law reads "each employee of a manufacturer of cigars shall be permitted to use for personal consumption and for experimental purposes, not to exceed 21 cigars per week," it is contemplated that, to be entitled to the 21 cigars per week, the employee shall have been at work each day of the week, and if he is employed for a less period than a full week, it is held that he shall be entitled to a only a proportionate number of tax-free cigars, or 3 cigars per day, for each full day actually employed by the manufacturer. Where an employee is engaged on piecework or is paid so much per 100 cigars, and such employee does not work a full week, he shall be entitled only to tax-free cigars for personal consumption and for experimental purposes at the rate of 3 cigars for each full day employed.

Relative to your second inquiry, you are advised that no report of the number of cigars "manufactured," "removed tax paid," or "total number of cigar makers employed" each day need be made on present Form 72 if no tax-free cigars are furnished to or taken by employees. Monthly return Form 72, however, should contain a statement to that effect, which must, without fail, be made with the understanding that it applies to cigars consumed within, as well as off, the bonded factory premises.

Each cigar or "smoker" manufactured and consumed by an employee, either within or off the bonded factory premises, must be reported as having been manufactured and its disposition accounted for in accordance with the law and the Treasury decision referred to.

Respectfully, W. H. Osborn, *Commissioner.*

Approved:

W. G. McAdoo,

Secretary of the Treasury.

(T. D. 1882.)

Income-tax law.

Income tax imposed on persons, firms, companies, copartnerships, corporations, joint-stock companies, associations, insurance companies, etc., under section 2, act of October 3, 1913.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., October 6, 1913.

To collectors of internal revenue:

The following provisions contained in Section II, act of October 3, 1913, are published for the information of internal-revenue officers and others concerned.

W. H. Osborn, *Commissioner.*

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SECTION II.

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum par annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed: and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax, but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or

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gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided*, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses: second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance to the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together.

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December

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thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided*, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further*, That in either case above mentioned no return of income not exceeding $3,000 shall be required: *Provided further*, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: *Provided further*, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list

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to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made

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in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided further*, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: *Provided further*, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

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F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: *Provided, however*, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: *Provided further*, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sus-

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tained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided*, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve

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funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: *Provided further*, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation,

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joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to

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include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association. or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules

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and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property,

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goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such

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collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: *And provided further*, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.

N. That for the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such sums as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem necessary, for information, detection, and bringing to trial and punishment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of $800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States,

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or any of the Territories thereof: *Provided*, That no agent paid from this appropriation shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than $5 a day and $3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service.

In the office of the Commissioner of Internal Revenue at Washington, District of Columbia, there shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, one additional deputy commissioner, at a salary of $4,000 per annum; two heads of divisions, whose compensation shall not exceed $2,500 per annum; and such other clerks, messengers, and employees, and to rent such quarters and to purchase such supplies as may be necessary: *Provided*, That for a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia, authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: *Provided further*, That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work.

(T. D. 1883.)

Income-tax employees.

Rules and regulations governing the employment of the force necessary to carry out the provisions of the income-tax law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 7, 1913.

To collectors of internal revenue and others concerned:

Under the provisions of Paragraph N, section 2, of the act of October 3, 1913, the following rules and regulations prepared by the honorable the Secretary of the Treasury, governing the employment of the force necessary to carry out the provisions of the income-tax law, are published for your information.

W. H. OSBORN, *Commissioner.*

TREASURY DEPARTMENT, *October 4, 1913.*

In the exercise of the power vested in the Secretary of the Treasury by the provisions of section 2 of the act of October 3, 1913, to fix rules and regulations for the purpose of securing faithful and competent service in the employment of the force necessary to carry out the provisions of the income-tax law, the following regulations are prescribed:

1. Applications for positions in connection with the enforcement of the income-tax law except those below the grade of heads of divisions in the office of the Commissioner

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of Internal Revenue at Washington, D. C., will be filed with the Commissioner of Internal Revenue, by whom the appointments are to be made, with the approval of the Secretary of the Treasury.

2. Applicants must be citizens of the United States and persons of good moral character, and the application must be supported by evidence, on the form prescribed for that purpose, that the applicant is not addicted to the use of intoxicating liquors or narcotic drugs, and has not been convicted of any crime or misdemeanor; has no defect of limb, hearing, sight, or speech which will interfere with the proper performance of his duties. The applicant will also state his place of birth, race, age, State, city, county, and congressional district in which he claims legal residence; military service, if any; whether married or single; his present state of health and whether he is physically capable of performing the duties of the position for which he is an applicant; his occupation at the time of signing application, and whether he is an employee of any State, city, town, or county.

3. Each applicant will be required to furnish a statement relative to his educational qualifications, the names of the institutions at which he studied, the time spent in each, and course of study pursued. He will also furnish a statement as to his practical business experience, when, where, and by whom employed for the five years preceding the filing of his application, the specific nature of his duties during this period, and any additional facts which may tend to show his fitness for the position for which he is an applicant.

4. The application should be made in the handwriting of the applicant and should give the names and addresses of five persons, preferably employers, who have knowledge of his previous business experience and capacity.

5. The application, indorsements, recommendations, certificates as to former services, etc., of each person appointed by the Commissioner of Internal Revenue will be forwarded to the Secretary of the Treasury for his consideration at the time the appointment is forwarded for approval, to be filed for future reference in the Division of Appointments of the Secretary's office.

6. Appointees will be required to devote their time, exclusive of all other occupations, to the discharge of the duties of the position to which appointed.

W. G. McAdoo, *Secretary.*

(T. D. 1884.)

Shipments to Porto Rico.

Under tariff act of October 3, 1913, shipments of articles, goods, wares, or merchandise to Porto Rico from the United States are exempted from any internal-revenue tax.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., October 10, 1913.

To collectors of internal revenue and others concerned:

Your attention is called to Section IV, Paragraph D, of the tariff act of October 3, 1913, regarding shipment of articles from the United States to Porto Rico free of tax, which provides:

That articles, goods, wares, or merchandise going into Porto Rico from the United States shall be exempted from the payment of any taxes imposed by the internal-revenue laws of the United States.

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Every manufacturer of any article or product subject to internal-revenue tax in your district should be notified of this provision of the law and advised that the articles or products so withdrawn shall be branded as prescribed for such articles for export, and in addition to such marks and brands there shall be stenciled or branded on the original packages or shipping cases in plain Roman letters not less than one half inch square, the words "For shipment to Porto Rico." All the provisions of Regulations No. 29 governing exportation of articles free of tax apply to such shipments made to Porto Rico.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1885.)

Special excise tax on corporations—Repeal provisions.

Extract from the "Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, extending the corporation-tax act from January 1, 1913, to February 28, 1913, inclusive, and repealing provisions of the act of August 5, 1909.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 13, 1913.

The following provisions contained in Section IV, act of October 3, 1913, Paragraph S, are published for the information of internal-revenue officers and others concerned.

W. H. OSBORN,
Commissioner of Internal Revenue.

SECTION IV.

Par. S. That, except as hereinafter provided, sections one to forty-two, both inclusive, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed: *Provided*, That nothing in this Act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this Act or in section twenty-eight hundred and sixty-two of the Revised Statutes of the United States, nor to repeal or in any manner affect the following numbered sections of the aforesaid Act approved August fifth, nineteen hundred and nine, viz: Subsection twenty-nine of section twenty-eight and subsequent laws and amendments relating to the establishment and continuance of a Customs Court, subsection thirty of section twenty-eight, providing for additional attorneys, subsection twelve of section twenty-eight and subsequent provisions establishing a Board of General Appraisers of merchandise, sections thirty, thirty-one, thirty-two, thirty-three, and thirty-five, imposing an internal revenue tax upon tobacco, section thirty-six, pro-

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viding for a tonnage duty, section thirty-nine, authorizing the Secretary of the Treasury to borrow on the credit of the United States to defray expenditures on account of the Panama Canal, section forty, authorizing the Secretary of the Treasury to borrow to meet public expenditures: *Provided further*, That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: *And provided further*, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: *Provided further*, That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, which may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed.

(T. D. 1886.)

Special tax—Liquor dealers.

Special-tax liability as liquor dealer incurred on account of the sale of confections in the form of candy shells containing spirituous liquors or wines.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 16, 1913.

SIR: This office is in receipt of your communication of the 6th instant, in which you state that the ——— Co., qualified retail liquor

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dealers, place on the market several confections containing spirituous liquors, under the names of "rum balls," "brandy balls," "after-dinner mints," etc. It appears that such candies are hollow shells filled with rum, brandy, creme de menthe, and other liquors, each shell containing approximately a half-teaspoonful of liquor. It further appears that this concern has on its premises one Davis automatic filter, which is used to clarify the spirits to be put into the candy.

You request to be informed (1) whether or not the ——— Co. incurred special-tax liability as rectifier on account of maintaining the above filter on its premises, and (2) whether or not dealers in such candies are liable to special tax as retail liquor dealers on account of the sale thereof.

Replying, you are informed that special-tax liability as rectifier should be asserted against the ——— Co. on account of having on its premises the above-mentioned Davis automatic filter.

With regard to the asserting of special-tax liabilities against dealers selling candies described as above, you are informed that this office is of the opinion that in the future special-tax liability as retail liquor dealer should be asserted on account of such sales. However, in asserting special-tax liability, care should be taken to see that such confections are merely candy shells to serve the purpose of containing spirits or wines therein. Special-tax liability of course should not be asserted on account of the sale of a genuine confection which is merely flavored with spirituous liquor or wine.

Respectfully, W. H. Osborn,
Commissioner of Internal Revenue.

Internal Revenue Agent, *St. Louis, Mo.*

(T. D. 1887.)

Federal income tax at the source on bonds, etc., of corporations, joint-stock companies, etc., under act of October 3, 1913.

Regulations regarding the deduction of the income tax at the source on interest maturing on bonds, notes, and other similar obligations of corporations, joint-stock companies, or associations and insurance companies, under the provisions of Section II of the act of October 3, 1913.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C.

TAX TO BE DEDUCTED AT SOURCE.

Under the income-tax law enacted October 3, 1913, a tax of 1 per cent, designated in the law as the *normal* tax, shall be deducted at

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"the source," beginning November 1, 1913, from all income accruing and payable to—

(*a*) Every citizen of the United States, whether residing at home or abroad; and to

(*b*) Every person residing in the United States, though not a citizen thereof,

which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to $3,000, excepting only the interest upon the obligations of the United States or its possessions, or a State or any political subdivision thereof.

The term "debtor," as hereinafter used, shall be construed to cover all corporations, joint-stock companies or associations, and insurance companies.

WHEN TAX SHALL BE WITHHELD BY DEBTOR.

For the purpose of collecting this tax on all coupons and registered interest originating or payable in the United States the source shall be the debtor (or its paying agent in the United States), which shall deduct the tax when same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon: *Provided*, That all such coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured. These certificates shall be in the forms hereinafter prescribed, and a separate certificate shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations, of each debtor.

WHEN TAX SHALL BE WITHHELD BY FIRST COLLECTING AGENCY.

If, however, the coupons or interest orders are not accompanied by certificates as prescribed above, the first bank, trust company, banking firm, or individual, or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax and shall attach to such coupons or interest orders its own certificate, giving the name and address of the owner of, or the person presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders; also setting forth the fact that they are withholding the tax upon them; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver

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to the Government the certificate of such bank, trust company, etc., which is withholding such tax money.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest, and to whom the certificates above provided for are delivered, should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity.

PAYMENT OF REGISTERED INTEREST BY DEBTORS.

A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds until there shall be filed with said debtor or its fiscal agent (and not later than thirty (30) days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed as follows:

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2, of the Federal income-tax law, or

By corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G, subdivision A, of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such.

DESIGNATION OF FISCAL AGENCIES.

The "debtor" may appoint paying or fiscal agents to act for it in matters pertaining to the collection of this tax upon filing with the collector of internal revenue for its district a proper notice of the appointment of such agent or agents.

CERTIFICATES CLAIMING EXEMPTION.

If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the full name and address of the owners, and shall also state whether they claim or do not then claim exemption from taxation at the source provided for by paragraph C of section 2 of the Federal income-tax law ($3,000,

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and under certain conditions $4,000) as to the income represented by such coupons or interest.

The certificates shall also show the amount, if any, of exemption claimed and the date of signature.

The form of certificate to be used for this purpose shall be substantially as follows:

(Form 1000.)

Form of certificate to be presented with coupons or interest orders stating whether or not exemption is claimed under paragraph C, section 2, of the Federal income-tax law.

I do solemnly declare that I, ..., a citizen or resident of the United States, and residing at ....., am the owner of $..... bonds
(Give full address.)
of the denominations of $..... each, Nos.....
.....
.....,
of the.....
(Give name of debtor.)
known as.....bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due....., 191.., amounting to $....., or upon which there matured ....., 191.., $..... of registered interest.

I {do / do not} now claim, with respect to the income represented by said interest, the benefit of a deduction of $..... allowed under paragraph C, Section II, of the Federal income-tax law, the total exemption to which I am entitled thereunder being $.....

Name .....

Address .....

Date ..... 191...

Whenever interest coupons, accompanied by a certificate of an individual who is a citizen or resident of the United States, as aforesaid, are presented to a debtor or its fiscal agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its fiscal agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership in the form herein prescribed.

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, except that it shall be filed with the debtor at least five (5) days before the due date of such interest.

BY WHOM SIGNED.

These certificates must be signed by the claimants with their full name, and contain their post-office and street address, also the date when signed.

Duly authorized agents, trustees acting in a trust capacity, etc., may sign such certificates for the persons for whom they act.

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ORGANIZATIONS WHOSE INTEREST COUPONS ARE NOT TAXED AT SOURCE.

If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision A of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

Such certificate shall be substantially in the following form:

(Form 1001.)

Certificate to be furnished by organizations not subject to tax on interest at source.

I, ..., the .....of the
(Give name.) (Give official position.)
.....a.....of.....located at.....
(Name of organization.) (Character of organization.) (State.) (Post-office address.)
do solemnly declare that said .....
(Give name of organization.)
is the owner of $.....bonds of the denomination of $.....each,
Nos.....
.....
.....of the .....
(Give name of debtor.)
known as.....bonds,
(Describe particular issue of bonds.)
from which were detached the accompanying coupons, due....., 191.., amounting to $....., or upon which there matured....., 191.., $.....of registered interest, and that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Name.....
(Official position.)
Of.....
(Name of organization.)
Date ....., 191.. Address.....
(Post office.)

This certificate must be signed by the full name of the organization, stating its place of business, and by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, together with the date of execution.

HOW COLLECTED WHEN NOT ACCOMPANIED BY THE CERTIFICATE OF OWNER.

Where coupons or interest orders are not accompanied by the ownership certificates, the form to be executed by the first bank,

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trust company, banking firm, individual, or collection agency receiving the same for collection or otherwise, which must accompany the coupons or interest orders, shall be substantially as follows:

(Form 1002.)

Form of certificate to be presented with coupons or interest orders when not accompanied by certificate of owners.

I, ..., the .....
(Name.) (Official position.)
of the ....., of ....., do solemnly declare
(Bank or collecting agency.) (Address.)
that said..... has (or have) purchased or accepted for collection
(Collecting agency.)
the accompanying coupons or interest orders amounting to $....., and which represent interest matured on $..... of bonds of the .....
(Name of debtor.)
and that ..... received said coupons or orders for registered interest
(Collecting agency.)
from..... ..... of ....., and that no certificate
(Name of party from whom received.) (Address of said party.)
of ownership accompanied said coupons or interest orders, and.....
(Collecting agency.)
hereby acknowledges responsibility of withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Name.....
(Collecting agency.)

By.....
(Signature of officer duly authorized to sign, and his official position.)

Address .....
(Give full address.)

Date..... 191...

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency, or person withholding the tax, with full name and address.

FINAL DISPOSITION OF CERTIFICATES.

The debtor or paying agents shall deliver all certificates, with the list of names and addresses of those for whom the tax has been withheld, showing amounts, as required by law, to the *collector of internal revenue* for their district on or before the 20th day of the month succeeding that in which said certificates were received by them.

INTEREST DUE BEFORE MARCH 1, 1913.

The tax shall not be withheld on coupons or registered interest maturing and payable before March 1, 1913, although presented for payment at a later date.

LICENSE REQUIRED FOR COLLECTION OF INCOME FROM FOREIGN COUNTRIES.

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or

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collection) the collection of coupons, checks, bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue and may be required to give bond in such amount and under such conditions as the Commissioner of Internal Revenue may prescribe.

BY WHOM TAX IS WITHHELD.

The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise shall withhold therefrom the normal tax of 1 per cent, and will be held responsible therefor. He (the licensee) shall thereupon indorse or stamp thereon the words "Income tax withheld by" (giving his or their name, address, and date), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., makes it impracticable to make said indorsement as above, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

LIST OF TAX COLLECTIONS ON FOREIGN ITEMS.

Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted, and from what source collected.

CERTIFICATES TO SECURE TAX EXEMPTION ON FOREIGN ITEMS.

In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the deductions allowable under paragraph C, Section II, of the Federal income-tax law, such individual shall be permitted to avail himself of the deduction claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

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In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid to the collector of internal revenue for his district not later than the 20th of the month next succeeding that in which said items were received, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse, or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations set forth in this section of the regulations includes the interest upon all foreign bonds, even though the coupons may be at the option of the holder, payable in the United States as well as in some foreign country.

ACCURATE RECORD TO BE KEPT BY LICENSEES.

All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers.

PENALTY FOR OMISSION TO OBTAIN LICENSE.

Failure to obtain license or to *comply with regulations* is punishable by a *fine* not exceeding *$5,000, or imprisonment* not exceeding *one year, or both*, in the discretion of the court. Such licenses shall continue in force until revoked.

Application for such licenses should be made to the collectors of internal revenue for the district in which they are engaged in business, and may be issued without cost to such persons as the commissioner may approve, upon their filing with the collector the bond herein provided for.

All persons in making application to the collector of internal revenue for such licenses shall register their names and addresses and state the nature of the business in which they are engaged. Such application for the license, accompanied by a proper surety bond, when both have been approved by the collector, will be considered a sufficient compliance with the law to enable the persons making application to do business until February 1, 1914, without incurring the penalties provided by law for failure to procure the required license.

PENALTY FOR FALSE STATEMENTS.

If any person, for the purpose of obtaining any allowance or reduction by virtue of a claim for exemption, either for himself or for any other,

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knowingly makes a false statement or false or fraudulent representation, he is liable under the act to severe penalties.

PARTNERSHIPS.

Where coupons or interest orders, presented for payment, represent the interest on bonds, or other similar obligations, owned by a partnership, they shall be accompanied by a certificate of ownership, which shall be signed either in the firm's name by one member of the firm or by each individual member of the partnership, and the normal tax shall be withheld by the debtor with respect to the income represented by said interest.

The following certificate should be used when coupons or interest orders are presented by citizens or residents of the United States for collection of interest on bonds, or other similar obligations, owned by the partnerships of which they are members:

Said certificate of ownership shall be in substantially the following form:

(Form 1003.)

Form of certificate to be filled out and signed by members of partnerships.

I, ..., a member of the firm or partnership of
(Name.)
..... of ..... and residing at .....
(Give full address.)
do solemnly declare that the said partnership is the owner of $.....
bonds of the denomination of $..... each, Nos.....
.....
of the ....
(Give name of debtor.)
known as ..... bonds, from which were detached the
(Describe the particular issue of bonds.)
accompanying interest coupons, due ....., 191.., amounting to $....., or upon which there matured ..... 191.., $..... of registered interest, and that the name and address of said firm or partnership, and the names of the individual members thereof, and their places of residence, are as follows:

Names of partners:	Address:
.....	.....
.....	.....
.....	.....
.....	.....

Name of partner signing: .....
Of firm of: .....
Address: .....

Date....., 191...

Any member of a partnership, who is entitled to a deduction (under paragraph C, Section II, of the income tax law) of his pro rata share of the tax which may be withheld at the source on interest

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on bonds owned by his copartnership, as above, may claim such deduction or allowance when he shall make his individual income-tax return for the year in which said deduction at the source was made.

NONRESIDENT FOREIGNERS OWNING INTEREST-BEARING BONDS NOT SUBJECT TO TAXATION ON INCOME FROM SUCH BONDS IF PROPER CERTIFICATE FURNISHED.

This tax will not be deducted from the income which may be derived from interest on bonds, mortgages, equipment trusts, receivers' certificates, or other similar obligations of which the bona fide owners are citizens of foreign countries residing in foreign countries: *Provided*, That such interest coupons, or in case of wholly registered bonds, the orders for the payment of such interest shall be accompanied by duly certified certificates hereinafter provided for to cover the cases of foreign and nonresident owners of bonds and other securities.

Unless such proof of foreign ownership is duly furnished, the normal tax of 1 per cent shall be deducted as herein provided.

Such certificate shall be in substantially the following form:

(Form 1004.)

Form of certificate to be presented with coupons or interest orders detached from bonds or other obligations owned by those who are both citizens, or subjects, and residents of foreign countries.

I do solemnly declare that I am not a citizen or resident of the United States of America, but a subject (or citizen) of....., and that I am the owner of $.....bonds of the denominations of $.....each, Nos. .....
.....
of the.....known as
(Give name of debtor corporation.)
.....bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons. due....., 191... amounting to $....., or upon which there matured ....., 191.., $..... of registered interest, and that being a nonresident foreigner, I am exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons, or interest.

Signature of owner of bonds.....
(Give full name.)

Date....., 191...

Address.....
(Give full post-office address.)

TEMPORARY PROVISION.

In view of the fact that the time required for the interpretation of the law and preparation and issuance of these regulations brings the date so near November 1, and that many coupons payable upon that

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date are already in transit without the prescribed certificates attached, with a desire to cause as small an amount of inconvenience as possible to bondholders and general business as may be compatible with the provisions of the law and of these regulations, the following temporary provision is made:

On November 1, 1913, and for 15 days thereafter, coupons presented to a debtor need not be accompanied by certificates in any of the forms hereinbefore described, provided that such coupons are accompanied by a certificate substantially in the following form:

(Form 1005.)

Form of temporary certificates which may be used only prior to November 16, 1913, subject to substitution.

I (or we) hereby certify that I am (or we are) lawfully entitled to present for payment the accompanying coupons or interest orders amounting to $..... (giving amount) representing interest matured on the following bonds..... (giving name of debtor and designating the description, style, and numbers of the bonds); that said coupons or interest orders came into my (our) possession unaccompanied by a certificate of ownership of said bonds, in any of the forms required by the regulations of the United States Treasury Department; and that the name and address of the owner of such bonds are as follows: ..... (give name and address of owner; if impossible to do this, so state).

Name of person, firm, or corporation presenting coupons:

.....

Address.....

Date....., 191...

On or before February 1, 1914, certificates of the ownership of any of the bonds upon which was collected the interest referred to in such temporary certificates, in any of the forms above set forth, may be delivered to the debtor; and said debtor may thereupon return any sum withheld to which the owner of such bonds may be entitled under the law and regulations upon the facts disclosed by such ownership certificates. Any temporary certificates relating to bonds for which certificates of ownership shall not have been substituted with the debtor shall, on or before March 1, 1914, be delivered to the collector of internal revenue.

All forms of certificates herein provided for shall be 8 inches wide and 3½ inches from top to bottom, and printed on paper corresponding in weight and texture to glazed bond paper 17 by 28, about 26 pounds to the ream of 500 sheets, or white writing paper 21 by 32, about 32 pounds to the ream of 500 sheets, and the person or corporation first receiving coupons or interest orders for collection shall write or stamp his or its name and address and date on the back of said certificates.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved October 25, 1913:
W. G. McAdoo, *Secretary of the Treasury.*

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(T. D. 1888.)

Status of deputy collectors of internal revenue.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 24, 1913.

To collectors of internal revenue:

The appended provision contained in the urgent deficiency act approved October 22, 1913, is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN,
Commissioner of Internal Revenue.

Provided, That hereafter any deputy collector of internal revenue or deputy marshal who may be required by law or by authority or direction of the collector of internal revenue or the United States Marshal to execute a bond to the collector of internal revenue or United States Marshal to secure faithful performance of official duty may be appointed by the said collector or marshal, who may require such bond without regard to the provisions of an Act of Congress entitled "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three, and amendments thereto, or any rule or regulation made in pursuance thereof, and the officer requiring said bond shall have power to revoke the appointment of any subordinate officer or employee and appoint his successor at his discretion without regard to the Act, amendments, rules, or regulations aforesaid.

(T. D. 1889.)

Withdrawal of distilled spirits.

Supplemental regulations governing the withdrawal of distilled spirits from bonded warehouses, free of tax, under the provisions of section 3464, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 23, 1913.

To facilitate the early withdrawal of distilled spirits from bonded warehouse under the provisions of section 3464, Revised Statutes, for use of the United States, internal revenue regulations (T. D. 1832) of February 10, 1913, are hereby amended so as to permit the filing of applications for such withdrawals directly with the collector of the district in which such warehouse is located.

The applications in such cases will be in the form prescribed in said regulations of February 10, 1913, and may be signed either by the head of the department or bureau for which the spirits are intended, or by the distiller or contractor, under requisition previously filed by such department or bureau.

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Requisitions for such purpose should, however, be filed directly with the Secretary of the Treasury and should be in the form prescribed in said regulations, except that the warehouse from which such withdrawals are to be made from time to time should be particularly described by name, registry number, and district.

Upon receipt of such requisitions by the Secretary copies thereof will be furnished the proper collectors, who will charge against such requisitions all withdrawals made thereunder.

Collectors are specially cautioned to see that the required transportation and delivery bond has been given before permitting the withdrawal of the spirits, and that the outstanding charges (based on the tax involved) in no instance exceed the penalty of the bond.

In either case herein provided the distiller will be required to file his entry for withdrawal, Form 179, and after the spirits have been properly gauged the collector will indorse on the reverse side of the application filed his order for delivery of the spirits to the applicant.

Upon the delivery of the spirits the storekeeper will indorse on the application his certificate of delivery, and the applicant, either before or at the time of such delivery, will also append his receipt.

The order, certificate of delivery, and receipt will be of the following form:

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,
——— *District of* ———,
——— ———, 191–.

To storekeeper ———:

A good and sufficient transportation bond for the within-described spirits having been filed, and the tax on ——— deficiency having been paid, you will deliver the within-described spirits to ——— free of tax, under the provisions of section 3464, Revised Statutes, and you will, after signing the attached certificate of delivery, return this paper to me.

——— ———, *Collector.*

The within-described spirits was delivered to ——— on the —— day of ———, 191–.

——— ———, *Storekeeper.*

——— ———,
———, 191–.

Received the within-described spirits this —— day of ———, 191–.

——— ———,
——— ———.

The spirits so gauged and withdrawn will be reported by the gauger on Form 59 and by the storekeeper on his daily and monthly returns, as heretofore prescribed, and such application under which such withdrawal is made will be forwarded by the collector with his monthly bonded account.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

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(T. D. 1890.)

Federal income tax, at the source, on other than *bonds, etc., of corporations, joint-stock companies, etc.*

Regulations (part 2) regarding the deduction of the income tax at the source on income *other than* interest maturing on bonds, notes, and other similar obligations of corporations, joint-stock companies or associations, and insurance companies, under the provisions of section 2 of the Federal income-tax law of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

The "source" in these regulations shall be construed as referring to the place where the income originates.

BY WHOM THE NORMAL TAX SHALL BE DEDUCTED AND WITHHELD.

All persons, firms, etc., mentioned in paragraph E of this law, hereinafter referred to either as "Debtors" or "Withholding agents," namely:

> Copartnerships, companies, corporations, joint-stock companies or associations, insurance companies, in whatever capacity acting, including lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest (except income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations upon which the normal tax of 1 per cent has otherwise been withheld at the source, as provided by regulations), rents, salaries, wages, royalties, taxable annuities, emoluments, or other fixed or determinable gains, profits, and income of another person, exceeding $3,000 for any taxable year, except as hereinafter provided,

shall deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax of 1 per cent imposed thereon by section 2 of this act, and shall make lawful return and pay the taxes so withheld to the Collector of Internal Revenue for the district in which said withholding agent resides or has his, her, or its principal place of business.

The normal tax of 1 per cent shall be thus withheld from all income derived from fixed annual periodical rent of realty or personalty, interest (except as herein otherwise provided), salaries, royalties, taxable annuities, and other fixed annual periodical income exceeding $3,000.

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ITEMS UPON WHICH TAX IS NOT TO BE WITHHELD AT THE SOURCE.

(1) Dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations and insurance companies subject to like tax, when said withholding agents are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district.

(2) Proceeds of life insurance policies paid upon the death of the person insured, or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of contract—all of which shall not be included as income under this law—but this shall not be construed to exempt said insurance companies from withholding and paying the normal tax of 1 per cent on interest income paid by insurance companies to beneficiaries of policies when said interest exceeds $3,000.

(3) Income of an individual which is *not* fixed or certain, and not payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but shall be listed in the annual return, and the tax shall be paid thereon by the individual.

Income derived from the following professions and vocations come under this head: Farmers, merchants, agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons whose income is irregular and indefinite.

Such persons shall make personal return of all their income, provided their total income from all sources exceeds $3,000. For example: When a lawyer receives a retainer of $5,000 as a special fee, a deduction therefrom shall not be made by the payer, but when a lawyer receives a retainer of $5,000 *per annum*, and the exemption claimed is $3,000, $2,000 of such income would be taxed and the tax retained at the source, or if his exemption claimed should be $4,000, $1,000 of such income would be taxed and the tax thereon withheld at the source.

(4) The value of property acquired by gift, bequest, devise, or descent.

(5) Interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof paid by a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

This exempts from the income tax all salaries paid to an individual by a State or any political subdivision thereof, including the salaries of State, county, and municipal officers, the salaries of public-school

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teachers, and special compensation paid by States or subdivisions thereof for professional services, whether in the shape of salaries or special fees.

NORMAL TAX ON THE SAME INCOME IS TO BE WITHHELD BUT ONCE.

The normal tax of 1 per cent shall be deducted and withheld *at the source*, and payment made to the Collector of Internal Revenue as provided in the law, by the debtor or his, her, or its duly appointed agent authorized to make such deduction and payment.

No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of 1 per cent thereon: *Provided*, That any person, firm, or organization, in whatever capacity acting, other than the debtor who has withheld said tax, shall file with the Collector of Internal Revenue for his, her, or its district, a certificate in substantially the following form:

(Form 1006.)

Form of certificate to be filed by persons, firms, or organizations required to withhold and pay said tax other than *the debtor at the source.*

To ....., *Collector of Internal Revenue,*
(Name of collector of internal revenue.)

.....
(Give address and designate district.)

I, ..., ...
(Name.) (Official title, if any.)

of the....., ...
(Person, firm, or organization.) (Capacity in which acting.)

of....., do solemnly declare that I (we)
(Post-office address.)

received of..... $....., same being
(Name from whom received.)

income derived from.....
(State source, whether rents, salary, or other sources.)

belonging to.....
(Give name of person to whom income is due.) (Address.)

and that the tax thereon amounting to $....., to which said person is subject, has been withheld at the source of said income by

....., ...
(Name of person withholding.) (Post-office address.)

(Signed).....

Address.....
(Street and number.)

.....
(City and State.)

Date: ....., 191...

EXEMPTIONS WHICH MAY BE CLAIMED BY INDIVIDUALS.

Any person subject to the normal tax of 1 per cent, the amount of which is withheld or is to be withheld at the source, wishing to avail himself or herself of the exemption provided in paragraph C, section 2, of this act ($3,000 or $4,000, as the case may be), must file with

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the withholding agent, not later than 30 days prior to the day on which the return on his income is due, a notice in the following form:

(Form 1007.)

Form for claiming exemption at the source as provided in paragraph C, section 2, of the Federal income-tax law of October 3, 1913.

To.....
(Give name of witholding agent.)

.....
(Post-office address.)

I hereby serve you with notice that I ..... am *single—married and living with my wife—husband*, and now claim the benefit of the
(Strike out so as to show status correctly.)
exemption of $....., as allowed in paragraphs C and D of section 2 of the Federal income-tax law of October 3, 1913 (my total exemption under said paragraphs being $.....).

Signed: .....

Address: .....
(Street and number.)

Date: ..... 191... .....
(City and State.)

BY WHOM EXEMPTIONS UNDER PARAGRAPH C, SECTION 2, OF THIS ACT MAY BE CLAIMED.

Every single person, or every married person not living with wife or husband, who is liable for the normal income tax under this law may claim a total deduction of $3,000 from net income, on which deduction he or she is exempt from said normal tax of 1 per cent.

Where a husband and wife live together and only one of them has an annual income liable for the normal tax of 1 per cent, then the husband or wife who has the income shall make the return and pay the said tax and may claim and deduct an exemption of $4,000.

But if a husband and wife live together and each has an annual income liable for the normal tax of 1 per cent, then in that event they shall make a separate return, and the $4,000 exemption allowed to a husband and a wife when living together may be claimed and deducted by *either* the husband or wife, as they may mutually agree (but not by both separately), or the said exemption shall be *prorated* between them in proportion to their net income.

AMOUNT OF EXEMPTION ALLOWABLE FOR 1913 UNDER PARAGRAPH C, SECTION 2, OF THE FEDERAL INCOME-TAX LAW.

For the present year of 1913 (from March 1 to December 31) exemptions allowed under paragraph C of this law will be five-sixths of those of the calendar year, as specified in paragraph D, namely, $2,500 if the exemption is $3,000, or $3,333.33 if the exemption is $4,000, as the case may be.

WHEN AND ON WHAT AMOUNT THE NORMAL TAX OF 1 PER CENT SHALL BE WITHHELD.

A withholding agent who pays monthly or periodically during the year interest (except income derived from interest upon bonds

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and mortgages, or deeds of trust, or other similar obligations of corporations, etc., upon which the normal tax of 1 per cent has been withheld at the source, as provided by regulations), rents, salaries, wages, etc., shall not withhold the said tax until such time as the rents, salaries, wages, etc., shall have reached an aggregate amount in excess of $3,000.

When such amount has been reached, he, she, or it shall withhold the tax on the whole $3,000 and excess thereof, *unless* the person to whom the income is due files with him, her, or it the notice, according to Form 1007, above provided for, claiming exemption under paragraph C of section 2 of this act, in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of $3,000 or $4,000 (as the case may be), and the tax so withheld shall be returned and paid by the withholding agent as required by law.

DEDUCTIONS TO BE MADE IN COMPUTING NET INCOME.

Any person subject to the normal income tax of 1 per cent, a part of whose income is withheld or is to be withheld at the source, who may wish to avail himself of the deductions authorized in subsection B, section 2, of this act, may file either with the Collector of Internal Revenue for the district in which return is made for him or with the withholding agent, not later than 30 days prior to March 1, a return and notice in substantially the following form:

(Form 1008. United States Internal Revenue.)

Form of return for making application for deductions, as provided by paragraphs B and E, section 2 of the Federal income-tax law of October 3, 1913.

To .....
(Name of withholding agent.)

.....
(Street and number.)

.....
(Town or city.) (State.)

I hereby solemnly declare that the following is a true and correct return of my gains, profits, and income from all other sources for the calendar year ended December 31, 191— (for the year 1913 the period to be covered is only for 10 months, from March 1 to December 31), and a true and correct return of deductions asked for under paragraph B of section 2 of the act of October 3, 1913, and I hereby claim deductions as shown below.

Amount of gains, profits, interest, rents, royalties, profits from copartnerships, and income from all other sources whatsoever..... $.....

DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, except business expenses of partnerships, and not including personal, living, or family expenses..... $.....
2. All interest paid within the year on personal indebtedness of taxpayer..... $.....
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)..... $.....

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4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise..... $.....
5. Debts due which have been actually ascertained to be worthless and charged off within the year..... $.....
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed in the case of mines 5 per cent of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made.. $.....
7. The amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income..... $.....
8. The amount of income, the tax upon which has been paid or withheld for payment at the source of income..... $.....

$.....

Total deductions..... $.....

Date..... ....., 191..

(Signed).....

Address.....

.....

NOTE.—Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law.

Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law.

AMOUNT OF DEDUCTION ALLOWABLE FOR 1913 ACCORDING TO PARAGRAPHS B AND D OF SECTION 2 OF THIS ACT.

For the present year of 1913 (from March 1 to December 31) the deductions allowed under paragraph B shall be five-sixths of the deductions allowable for a calendar year, as specified in paragraph D of this law.

AMOUNT OF TAX TO BE WITHHELD FOR 1913 AND WHEN WITHHELD.

The withholding agent is not required to deduct and withhold prior to November 1, 1913, the normal tax of 1 per cent for which an individual is liable.

Whenever the total amount of income paid to any person by a withholding agent *after* October 31, 1913, shall be in excess of $3,000, then, in that event, the withholding agent shall be liable for and shall deduct and withhold the tax on such amount, unless such person shall file a statement, according to Form 1007, claiming an exemption as allowed in paragraph D of this act, the amount of exemption allowable being $2,500 if the annual exemption is $3,000, or $3,333.33 if the annual exemption is $4,000, as the case may be.

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PERSONS PHYSICALLY UNABLE TO MAKE RETURNS.

If a person subject to said tax part of whose income is withheld or is to be withheld, is a minor or insane person, or is absent from the United States, or unable to make the application or return because of serious illness, the application or return may be made by the withholding agent, who shall make the following oath under the penalties of this act:

(Form 1099.)

Form of oath required of a withholding agent when acting for another in filing return and making application for deductions allowable under paragraph B, as provided in paragraph E, section 2, of the Federal income-tax law of October 3, 1913.

I hereby swear (or affirm) that I have sufficient knowledge of the affairs and property of.....to enable me to make
(Naming person and address for whom acting.)
a full and complete return for....., and that the return of income and
(Naming person.)
application for deductions made by me are true and accurate.

(Signed).....

Address.....
(Street and number.)

.....
(City and State.)

Date:....., 191...

Signed and sworn to before....., 191...

.....

PENALTIES.

Subsection F of section 2 of the income-tax law provides *inter alia* as follows:

Any person or any officer of any corporation required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made shall be guilty of a misdemeanor and shall be *fined* not exceeding *$2,000* or be *imprisoned* not exceeding *one year, or both*, in the discretion of the court, with the costs of prosecution.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved October 31, 1913:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1891.)

Income tax on notes given for interest, rents, etc.

How tax shall be collected when such notes before their maturity shall have been sold by the payee or recipient, or shall have been discounted with banks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1913.

To collectors of internal revenue:

When a note shall have been given in payment of interest, rents, or other income accruing after March 1, 1913, and said note matures

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on or after November 1, 1913, the *maker of the note*, as the "debtor" and as the "source" where the income originates, is required, in paying such note, to withhold the normal tax of 1 per cent on the entire amount of the note, if said note is in excess of $3,000, *unless* a claim shall be made for exemption of $3,000 or $4,000 (as the case may be) under the provisions of paragraph C, section 2 of the act; and, if such claim for exemption shall be made (as provided for on Form 1007), then the said tax shall be withheld only on the amount of said note *in excess of the exemption* claimed in said certificate.

If any person who has purchased or discounted any of said notes may have omitted, in acquiring them from previous holder, to make a deduction or allowance for said tax, such purchaser can only look for relief to the person from whom he shall have gotten the notes, and the "debtor," the maker of said notes, will be held liable for and be required to deduct, withhold, and pay to the collector of internal revenue the amount of the normal tax of 1 per cent which may be due thereon under the law and these regulations.

To illustrate:

A (unmarried, and who does not claim the $3,000 exemption provided in paragraph C of section 2 of the income-tax law) borrows on May 1, 1912, $120,000 from B at 6 per cent per annum interest on two years' time, and gives B his bond for $120,000 for the principal and four $3,600 notes, each representing six months' interest, for the maturing interest, payable May 1 and November 1 each year. On October 1, 1913, B takes A's interest note for $3,600, due November 1, 1913 (which bears no mark to indicate that it represents interest), to the Richmond National Bank; the bank is not informed that the note represents interest, but being satisfied that A, the maker of the note, is good without additional indorsement, discounts the note for B at the rate of 6 per cent per annum and pays to B the proceeds—$3,582.

On November 1, 1913, the note matures and the bank calls on A, the maker, to pay the note. A offers the bank $3,564, which is equal to $3,600 less the 1 per cent tax of $36, informing the bank that the note represents interest which he owes and that, under the Federal income-tax law, he is required to deduct this tax from the face of the note in making payment.

The bank claims that it was not informed that the note represented interest and, therefore, subject to this tax; but *A is, nevertheless, required under the law to withhold the tax.*

If A under his contract with B had agreed to pay the interest *without deduction for any income tax* which might be imposed by the Government, he would, of course, after deducting the 1 per cent tax for the Government, pay the bank, as holder of the note, the full

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amount of $3,600. But, if the contract between A and B did *not* provide that A would pay the full interest without deducting such income tax as the Government might impose, and, if the bank should, therefore, desire to reimburse itself for the amount of the tax thus deducted by A, the bank can look only to B, for whom it discounted the note, and the question as to whether this $36 deduction should be borne by B or by the bank is a question which must be settled mutually between the bank and B.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1892.)

Income tax.

Interest upon obligations of the United States or its possessions, or of any State, county, city, or any other political subdivision thereof, is not subject to income tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1913.

To collectors of internal revenue:

It has been called to the attention of this office that banks in certain sections are refusing to pay coupons for interest on bonds of States, counties, cities, or other political subdivisions of the United States, when such coupons are not accompanied by certificates of ownership, without deducting the normal income tax of 1 per cent, which the law and the regulations of this department require shall be deducted at the source in paying the interest on bonds of corporations, joint-stock companies or associations, and insurance companies.

Please inform all parties interested, giving the information wide publicity, that the income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, *is not subject to the income tax*, and a certificate of ownership in connection with the coupons or registered interest orders for such interest will not be required.

The interest coupons should clearly show on their face whether they are issued by the United States or any political subdivision thereof. If, however, they do not clearly show this, then, of course, an ownership certificate should be required.

W. H. OSBORN,
Commissioner of Internal Revenue.

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(T. D. 1893.)

Income tax.

Income tax on the interest on bank deposits and bank certificates of deposit not to be withheld at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1913.

To collectors of internal revenue:

Banks, bankers, trust companies, and other banking institutions receiving deposits of money are *not required* under the Treasury regulations (part 2), approved October 31, 1913, to withhold at the source the normal income tax of 1 per cent on the interest paid or accrued or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid or accrued and not paid, must be included in his tax return by the person or persons entitled to receive such interest, whether on open account or on the certificate of deposit.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1894.)

Income tax.

Income-tax ruling as to how and by whom certificates of ownership may be signed in cases where bonds of corporations, joint-stock companies or associations, and insurance companies are owned by nonresident aliens.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 12, 1913.

To collectors of internal revenue:

Coupons (or orders for registered interest) payable in the United States, representing the interest on bonds owned by nonresident aliens, *must be accompanied by the prescribed certificate*, Form 1004, as per Treasury regulations of October 25, 1913; but this certificate may be signed either by the owner himself (herself or themselves) or in behalf of the owner by a reputable bank or bankers, or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide nonresident

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and alien owners, and when such certificate is thus attached the normal tax of 1 per cent on such coupons or interest orders need not be withheld at the source by the debtor or collecting agency.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1895.)

Annual inventories.

Annual inventories to be made by cigar and tobacco manufacturers and verified by collectors and their deputies.

[Circular No. 709, revised Nov. 15, 1913.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1913.

To collectors of internal revenue:

Every manufacturer of tobacco or snuff and every manufacturer of cigars or cigarettes shall make a true inventory of the stock of tobacco materials, stamped and unstamped manufactured tobacco, snuff, cigars, and cigarettes, and attached and unattached internal-revenue stamps on hand in the factory on the 1st day of January of each year, and shall verify the same by his own oath, as provided in sections 3358 and 3390 of the Revised Statutes, respectively. These statutes also require that the collector (or his deputy) shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory and shall verify the fact of such examination by oath to be indorsed on the inventory.

These inventories are important elements in making up statements of manufacturers' accounts for the year or period. It is absolutely essential that the accuracy of an inventory shall not be questioned by a manufacturer whose accounts show deficiencies and who is, in consequence, called upon to show cause against assessment for omitted tax. *Each manufacturer shall see to it that a proper inventory of his factory is made, for the reason that such inventory having been sworn to by the manufacturer and verified under oath by a deputy collector, no claim of failure to include certain tobacco, made in response to a deficiency notice, will be entertained.* Therefore, the following instructions in regard to making the required inventory must be observed:

(*a*) All tobacco material within the metes and bounds of the bonded factory premises, as described on (Form 36 or 36½ and) Form 41½ posted in the factory, shall be segregated into classes cor-

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responding strictly with the headings provided therefor in Form 70a or Form 70b.

(*b*) Each class of tobacco shall be weighed separately.

(*c*) Tobacco dust, siftings, sweepings, and waste which has accumulated in manufacturing shall *not* be included under any class of tobacco, except under the head of "Waste," which is provided for in inventory Form 70b. The quantity of each of these by-products may there be shown separately.

(*d*) Inventory must include all unstemmed leaf tobacco stored off the bonded factory premises for which outside storage permission has been granted.

(*e*) To enable the deputy collector to verify the inventory, memoranda of each unopened hogshead, case, or bale, or other package of tobacco, each sufficiently described for identification by the deputy, all broken packages or loose tobacco within the factory, and all unstemmed tobacco stored by permission off the bonded premises, shall be made on the back of the inventory form or preserved on separate sheets of the same size.

(*f*) An accurate record should also be kept of the quantity of each different kind of tobacco used in production between the time inventory is taken and the time the deputy calls to verify the same.

Collectors will instruct their deputies to so arrange their routes as to make these verifications at the earliest practicable date after January 1 next. In verifying an inventory each deputy collector—

1. Will see that each class of tobacco is properly inventoried and instructions above are observed.

2. Will determine from the quantities of each different kind of tobacco purchased, sold, and used between the date inventory was taken and the time of his verification as to the correctness of the inventory, and will require any necessary amendments before the manufacturer makes oath to same before him.

"Deficiencies found by examining officers" should be immediately reported to the collector, and shall be treated in accordance with instructions under that head on page 60 of Regulations No. 8, revised July 1, 1910.

Upon receipt of these inventories, properly verified, collectors will prepare their abstract statements on revised Forms 144 and 146 of the accounts of cigar and tobacco manufacturers in their districts for the year or period ending December 31, 1913, observing in such preparation instructions in T. D. 1479 and T. D. 1726, respectively, and will forward said accounts to this office as fast as they are completed, not later than 90 days from the 1st day of January, 1914. An account showing a deficiency should not be held until the tax on same is collected, but forwarded at once, after having made sure it is correctly stated.

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Collectors are hereby instructed to cause a copy of this circular, together with the necessary inventory blank, to be delivered to each manufacturer of tobacco, snuff, cigars, or cigarettes registered within their respective districts not later than the 15th day of December next, for the taking of the required inventories on January 1, 1914.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1896.)

Special excise tax on corporations—Decision of the United States Supreme Court.

1. RECEIVERS.

The receivers were authorized to operate the railroads and to discharge the public obligations of the corporations, but they did this as officers of the court and subject to the orders of the court, not as officers of the corporations.

2. CORPORATE MANAGEMENT OUSTED.

The possession and control of the receivers appointed by the court constituted an ouster of corporate management and control.

3. ACT OF 1909 NOT AN INCOME TAX ACT.

The act of 1909 imposed an excise tax, not an income tax, and did not impose a tax upon the income derived from the management of corporate property by receivers under such conditions as are here presented.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1913.

The appended decision of the United States Supreme Court in the case of United States *v.* Frederick W. Whitridge, receiver of the Third Avenue Railroad Co. *et al.*, and United States *v.* Adrian H. Joline and Douglas Robinson, receivers of the Metropolitan Street Railway Co. *et al.*, is published for the information of internal-revenue officers and others concerned.

W. H. OSBORN,
Commissioner of Internal Revenue.

SUPREME COURT OF THE UNITED STATES. NOS. 466 AND 467. OCTOBER TERM, 1913

United States, petitioner, v. *Frederick W. Whitridge, as receiver of the Third Avenue Railroad Co., et al.*

United States, petitioner, v. *Adrian H. Joline and Douglas Robinson, as receivers of the Metropolitan Street Railway Co., et al.*

ON WRITS of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[Nov. 10, 1913.]

Mr. Justice PITNEY delivered the opinion of the court:

These cases were heard together in the District Court and in the Circuit Court of Appeals (*sub nom.* Pennsylvania Steel Co. *v.* New York City Railway Co.,

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193 Fed., 286; 198 Fed., 774). They were argued together in this court and may be disposed of in a single opinion.

In the years 1909 and 1910 certain lines of street railway in the City of New York, that may be conveniently designated as the Third Avenue system, were in the hands of the respondent Whitridge, as receiver, under orders made in the year 1908 by the Circuit Court of the United States for the Southern District of New York in actions pending therein against the several proprietary companies. One of these actions was a foreclosure suit; the others were creditors' actions based upon the insolvency of the respective companies. The powers conferred upon the receiver did not vary in any respect now material, and so a recital of the substance of one of the orders will suffice as an example. This order constituted Whitridge receiver of all the railroads and other property of the company, including tracks, cars, and other rolling stock and equipment, easements, privileges, and franchises, and the tolls, earnings, income, rents, issues, and profits thereof, with authority to "run, manage, and operate the said railroads and properties, to collect the rents, income, tolls, issues, and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this court." By the same order the officers, agents, and employees of the company were required to turn over and deliver to the receiver all of the said property in their hands or under their control, and the company was enjoined from interfering in any way with his possession or management.

In the same years (1909 and 1910) certain other lines of street railway in the city of New York, which may be described as the Metropolitan system, were in the possession of the respondents, Joline and Robinson, as receivers, appointed in the year 1907 by the Circuit Court of the United States for the same district in several actions therein pending against the corporations which were owners of these lines. The orders appointing these receivers contain provisions substantially similar to those already recited. See *In re* Metropolitan Railway Receivership (208 U. S., 90, 93–96).

In the year 1911 petitions were filed in the Circuit Court in behalf of the United States praying for orders directing the receivers to make returns of the net income of the respective railway corporations for the years 1909 and 1910 to the collector of internal revenue in the manner required by the provisions of the corporation-tax law. (Act of Aug. 5, 1909, sec. 38; 36 Stat., ch. 6, pp. 11, 112–117.)

The applications were resisted by the receivers on the ground that the respective corporations did not during the years 1909 and 1910 carry on any business in respect of the property that was in their hands as such receivers; that they as such receivers managed, controlled, and operated the same, and carried on all the business in respect thereto, and received all the income arising therefrom, not acting in place of the directors and officers of the respective companies, but as officers of the court; and that they were therefore not subject to the provisions of the act.

Jurisdiction of the controversy having been transferred to the District Court by virtue of the new judicial code (sec. 290), that court sustained the contention of the receivers (193 Fed., 286) and the Circuit Court of Appeals affirmed this decision (198 Fed., 774). The cases are brought here by writs of certiorari

As had been repeatedly pointed out by this court, the corporation-tax law of 1909—enacted, as it was, after Congress had proposed to the legislatures of the several States the adoption of the sixteenth amendment to the Constitution, but before the ratification of that amendment—imposed an excise tax and not in any sense a tax upon property or upon income merely as income. It was

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enacted in view of the decision of this court in Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429; 158 U. S., 601), which held the income-tax provisions of a previous law (act of Aug. 15, 1894, 28 Stat., ch. 349, pp. 509, 553, sec. 27, etc.), to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution and because not apportioned in the manner required by that instrument.

As was said in Flint *v.* Stone-Tracy Co. (220 U. S., 107, 145), respecting the act of August 5, 1909—"the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof, in a sum equivalent to 1 per cent upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of corporate organization it may be described generally as a tax upon the doing of business in a corporate capacity." This interpretation was adhered to and made the basis of decision in Zonne *v.* Minneapolis Syndicate (220 U. S., 187) and McCoach *v.* Minehill Railway Co. (228 U. S., 295, 300).

A reference to the language of the act[1] is sufficient to show that it does not in terms impose a tax upon corporate property or franchises as such, nor upon the income arising from the conduct of business, unless it be carried on by the corporation. Nor does it in terms impose any duty upon the receivers of corporations or of corporate property with respect to paying taxes upon the income arising from their management of the corporate assets or with respect to making any return of such income.

And we are unable to perceive that such receivers are within the spirit and purpose of the act any more than they are within its letter. True, they may hold, for the time, all the franchises and property of the corporation excepting its primary franchise of corporate existence. In the present cases the receivers were authorized and required to manage and operate the railroads and to discharge the public obligations of the corporations in this behalf. But they did this as officers of the court, and subject to the orders of the court; not as officers of the respective corporations, nor with the advantages that inhere in corporate organization as such. The possession and control of the receivers constituted, on the contrary, an ouster of corporate management and control, with the accompanying advantages and privileges.

Without amplifying the discussion, we content ourselves with saying that, having regard to the genesis of the legislation, the constitutional limitation in

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[1] Sec. 38. That every corporation * * * organized for profit and having a capital stock represented by shares * * * organized under the laws of the United States or of any State * * * and engaged in business in any State * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to 1 per centum upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations * * * subject to the tax hereby imposed * * *.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation * * * received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties * * *.

And on or before the 1st day of March, 1910, and the 1st day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations * * * subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation * * * has its principal place of business.

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view of which it was evidently framed, the language employed by the lawmaker, and the reason and spirit of the enactment, all considerations alike lead to the conclusion that the act of 1909 did not impose a tax upon the income derived from the management of corporate property by receivers under such conditions as are here presented.

Decrees *affirmed.*

(T. D. 1897.)

Income tax.

Instructions to collectors relative to corporations, joint-stock companies or associations, and insurance companies making return of annual net income for their fiscal years instead of the calendar year.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 14, 1913.

To collectors of internal revenue:

The Federal income-tax law (sec. 2, act of Oct. 3, 1913) authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established "fiscal year," or consecutive 12-months' period, which may be other than the calendar year.

Pursuant to this provision, the following instructions are issued for the guidance of collectors and other interested parties:

Any corporation, joint-stock company or association, or any insurance company, subject to the tax imposed by this act, may, at its option, have the tax payable by it computed upon the basis of the net income received (accrued) from all sources during its fiscal year, *provided* that it shall designate the *last day* of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, *not less than thirty days prior to the date upon which its annual return is to be filed*, give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.

In pursuance of this provision, a corporation or like organization subject to this tax may, for example, designate the 30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector *not less than thirty days*

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prior to the last day of such sixty-day period. In the case just instanced, the notice must be given not later than October 31.

If such designation (Sept. 30, 1913), had been made and notice given, as hereinbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income received (accrued) by it during the period from January 1 to September 30, 1913, both dates inclusive.

In the absence of such designation and notice of the closing of the fiscal year corporations and like organizations subject to this tax will be required to make their returns and have the tax computed upon the basis of the net income for the calendar year.

Collectors of internal revenue receiving notices of the selection and designation of the "fiscal years," as above indicated, will make record of the same, recording (*a*) the name of the corporation or like organization, (*b*) the date when the notice was given, (*c*) the day designated for the closing of the fiscal year, and (*d*) the date when the return under such designation must be filed, which must be, as above stated, not later than the last day of the 60-day period next following the day designated as the close of the fiscal year.

If it shall appear that for the current year the notice was given within the prescribed time—that is, within 30 days of the last day of the 60-day period—the 1913 return may be made as of the fiscal year so established; otherwise it will be made *on the basis of the calendar year* until such time as the designation shall be duly made and notice thereof properly given.

The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30, 1914, as the date of the closing of its fiscal year and gives notice of such designation, it would not be authorized to make a return for the 4 months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the case of such corporation the return for the current year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the 4 months ended April 30, 1914, and *thereafter* the return will be made on the basis of the fiscal year so established.

In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year.

Such returns, for the period covered, must be true and accurate, definite and complete, and, in as far as consistent with the provisions of the law, must conform to the showing made by the books

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of the company, and must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated.

If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year.

Returns made under this act and pursuant to these instructions must be made on the new forms prescribed by this department.

The forms heretofore in use, under the special excise-tax law, can not be used for making returns for either the fiscal or calendar year 1913.

If returns of such corporations as have properly established a fiscal year are due to be made before the new forms are available, the collector will be authorized to grant an extension of time to such corporations, not exceeding 30 days, for the filing of such returns, by which time the new forms prescribed will be available for distribution.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1898.)

Denatured alcohol.

Manufacturers using specially denatured alcohol required to keep daily record and sign returns.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 14, 1913.

SIR: On examination of the transcripts of record of the manufacturers of your district using specially denatured alcohol, it appears that no record has been kept of the quantity of such alcohol used each day. It also is noted that such transcripts are not signed by the manufacturers.

All such transcripts should show, in detail, in the proper column, Form 567, the exact quantity of alcohol used each day, so as to enable visiting Government officers to verify the record at any time.

You will also hereafter require these transcripts to be signed by the manufacturer or some person duly authorized by him, and having

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knowledge of the facts. Where manufacturers have provided a form of transcript having no designated place for signature, the required signature may be in the margin or on the face of such transcript.

Respectfully,

W. H. OSBORN,
Commissioner of Internal Revenue.

COLLECTOR OF INTERNAL REVENUE, *Omaha, Nebr.*

(T. D. 1899.)

Denatured alcohol.

Extending formula No. 19 for use in the manufacture of by-products from distillery slop.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 19, 1913.

SIR: You will please inform the ——— Company, manufacturers of your district, that their application and bond filed for the use of alcohol specially denatured under formula No. 19 (to 100 gallons of ethyl alcohol add 100 gallons of ethyl ether) in the manufacture of by-products from distillery slop are hereby approved.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner of Internal Revenue.

COLLECTOR FIFTH DISTRICT, *Peoria, Ill.*

(T. D. 1900.)

Denatured alcohol.

Extending formula No. 13a for use in the manufacture of celery oil.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 24, 1913.

SIR: You will please advise the ——— Company, manufacturers of your district, that the use of alcohol free of tax under the provisions of the act of June 7, 1906, will be permitted in the manufacture of celery oil in which no alcohol remains in the finished product, and that formula No. 13a (to 100 gallons of ethyl alcohol add 10 gallons of sulphuric ether) may be used for that purpose.

This denaturant is authorized because of representations made by manufacturers to the effect that this formula is the only one that may safely be used without contaminating the resulting food product and at the same time make the process a commercial success. In this

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connection your attention is directed to T. D. 1217, and in recommending the granting of permits for the use of this formula in the future internal-revenue officers will be guided by the instructions therein.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner of Internal Revenue.

COLLECTOR FIRST DISTRICT, *Camden, N. J.*

(T. D. 1901.)

Income tax.

Waiver until March 31, 1914, of Treasury requirements for the filling in on certificates of the numbers of the bonds of corporations, etc., upon the interest from which the normal income tax of 1 per cent is required to be deducted at the source under the provisions of the income-tax law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Notice is hereby given that the Treasury Regulations heretofore issued, which require that the *numbers of the bonds*, or other like obligations of corporations, etc., from which interest coupons are detached, or upon which registered interest is to be paid, shall be filled in on the certificates, are hereby waived, *so far as the filling in of the numbers of the bonds or other such obligations on the certificate is concerned*, until March 31, 1914.

In all other respects, the certificates referred to must be filled in in accordance with the Treasury Regulations, before the coupons or orders for registered interest to which they may be attached shall be paid.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1902.)

Income tax.

Extension of time for use of temporary form 1005, from November 16, 1913, to January 15, 1914, so far as foreign holders of coupons and interest orders may be concerned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

The time for the use of temporary certificate (Form 1005) shall be extended from November 16, 1913, to January 15, 1914, when signed

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by a person, firm, or corporation licensed under paragraph E of the income-tax law, provided such form shall only be used in cases where the coupons to which it shall relate shall have been received by such licensed person, firm, or corporation from a foreign country.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913.
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1903.)

Income Tax.

Regulations permitting the substitution, under certain conditions, of the certificates of banks, bankers, or other collecting agents, for the certificates of the owners required to be attached to interest coupons when presented for collection, under income tax regulations of October 25, 1913, and those supplementary thereto.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Treasury Regulations of October 25, 1913, and those supplementary thereto, require that, under the conditions therein prescribed, there shall be attached to interest coupons, maturing on bonds and other similar obligations of corporations, etc., which may be presented for collection, certain certificates of ownership signed by the owners of the bonds from which the coupons were detached or by their duly authorized agents.

Notice is hereby given that responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached may either present the coupons with the attached certificates to the debtor or withholding agent for collection, or, at the option of the collecting agent, the certificates above referred to may be detached from such coupons and forwarded direct to the Commissioner of Internal Revenue at Washington, D. C., as hereinafter set forth, *provided* such bank, banker, or collecting agent shall thereupon substitute for said owners' certificate and attach to said coupons, in lieu of said certificate of owner, a certificate signed by said bank, banker, or collecting agent, to whom said coupons may have been first presented for collection, in substantially the following form:

(Form 1000a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct

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to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations. No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)

$..... bonds of the ..... from which were de-
(Name of debtor organization.)

tached the accompanying interest coupons due ....., 191–, amount-
(Maturity.)

ing to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. ....., which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....
....., ..., 191–," and in which the said
(Name of collecting agency.) (Date.)

owner {does / does not} claim, with respect to the income represented by said interest, the benefit of a deduction of $....., allowed under paragraph C, Section II, of the Federal income-tax law, the total exemption to which said owner now claims to be entitled thereunder being $....., and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191–, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date....., 191–. Address.....

The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection, must be given the following indorsement by the collecting agents and should be made preferably with a rubber stamp:

Owner's certificate No. .....

.....
(Name of collecting agency.)

....., 191–.
(Give date of certificate.)

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent, by whom the coupons are payable.

Certificates of owners for which collecting agents' certificates are substituted must be forwarded to the Commissioner of Internal Revenue at Washington, D. C., by the collecting agency receiving them not later than the 20th day of the month succeeding that in which said coupons were thus received for collection.

All banks, bankers, or other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will be required to keep a complete record of all such transactions and substitutions of certificates, showing all certificates for

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which the collecting agents' certificates have been issued in lieu of the owners' certificates.

This record should be kept by months and should give the following information:

Serial number of item received.

Date received.

Name of person from whom received

Address.

Name of debtor corporation.

Class of bond from which coupons were cut.

Face amount of coupons collected.

Deductions from tax claimed by owners under paragraph C of Federal income-tax law.

Amount of interest collected.

Until the further ruling by this department, the banks, bankers, and other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will not be required to secure a license from the Treasury Department for being permitted to make such substitutions of their own certificate for those of the owners, provided these regulations are strictly complied with.

The permission to banks, bankers, and collecting agents to substitute their own certificates under the above regulations for those of the owners of the bonds, etc., will extend to responsible banks, bankers, and collecting agents in foreign countries, as well as to those in the United States.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1904.)

Supplemental regulations relative to duly authorized agent's authority to sign certificates of ownership which accompany coupons or registered interest orders when presented for collection.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Certificates of ownership which are required to accompany all coupons or registered interest orders under regulations made in pursuance of section 2, act of October 3, 1913, may be signed in the name of the owner of the bonds, by his duly authorized agent, and the said certificates shall give the full name and address of both the owner and his authorized agent.

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If the person, firm, or organization to whom the certificate thus signed is presented for collection is reasonably satisfied as to the identity and responsibility of the person signing as duly authorized agent, he or it shall stamp or write on the face of said certificate, "Satisfied as to identity and responsibility of agent," giving name and address of person thus certifying, and said certificate may then be accepted by persons, firms, or organizations to whom presented, without requiring further evidence as to authority of agent.

If the person, firm, or organization first receiving certificate of ownership signed by an agent is not satisfied or can not satisfy himself or itself as to the agent's identity and responsibility, then, in that event, the authorized agent shall furnish evidence of his authority so to act, which evidence will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall then be indorsed as provided herein.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1905.)

Income tax.

Supplemental regulations relative to partnerships.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Inasmuch as individual members of a partnership are liable for income tax upon their respective interest in the net earnings of said partnership and are required to include said net earnings in their personal returns, the partnership may file with the debtor corporation, or with a withholding agent, a notice, signed in the name of the partnership, by a member thereof, claiming a deduction of a specific amount on account of the legitimate expenses (not including the personal or living expenses of the partners) incurred in conducting the business of said partnership, and, upon receipt of said notice, said withholding agent shall not withhold, and shall not be held liable for, the normal tax on the amount of income equal to the amount of deduction claimed in said notice, but in no event shall the total of the amounts claimed, as provided herein, be in excess of the total amount of the actual legitimate annual expenses incurred by said partnership

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in the conduct of its business. Application for such deduction shall be made in substantially the following form:

(Form 1011.)

Form of certificate to be filed with withholding agents by partnerships claiming deductions.

I, ..., a member of the firm or partnership of..... of....., conducting the business of.....
(Give character of business
....., and residing at....., do solemnly
conducted by partnership.) (Give full address.)
declare that the said partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the .....known as
(Give name of debtor.)
.....bonds, from which were detached the accompanying
(Describe the particular issue of bonds.)
interest coupons due....., 191.., amounting to $....., or upon which there matured....., 191.., $..... of registered interest, or is the owner of..... upon which there accrued.....,
(Property or investments.)
191.., $.....of income.

We hereby claim a deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and do solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed.

Name of signing partner.....

For.....
(Name of partnership.)

Address.....

Date....., 191...

Partnerships are not subject *as partnerships* to the income tax and are required to make statements of their income and earnings as partnerships only when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business, and when such a statement is required, as aforesaid, the said statement shall give a complete and correct report of the gross income of the said partnership and also a complete account of the actual legitimate annual expenses of conducting the business of said partnership (not including living and personal expenses of the partners) and the net profits and the name and address of each of the members of said partnership and their respective interest in the net profits thus reported.

The net annual income of a partnership when apportioned and paid to the members thereof, shall be returned by each individual partner receiving same, in his annual return of net income, and the tax shall be paid thereon by said individual partner, as required by law.

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When the annual income of a partnership is not distributed and paid to the members thereof, the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as part of their gross income, the same as if said profits had been distributed and paid to them.

Undivided annual net income of partnerships thus returned by the individual members thereof, upon which the tax shall have been paid, shall not, when said profits are actually distributed and paid to the partners, be again included in their annual return as a part of their gross income.

Foreign partnerships or firms, all the members of which are both citizens or subjects and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks, of corporations, joint-stock companies or associations, and insurance companies, organized or doing business in the United States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States, certificate and notice of ownership, setting forth the facts as to nonresidence and alienship, and the debtor or withholding agent shall not withhold any part of their said income.

Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners resident in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership, who is a citizen of the United States or who is a foreigner residing in the United States or its possessions, shall be given on the said certificate, and no part of said income shall be withheld by the paying agent.

The said certificate and notice of ownership shall be in substantially the following form:

(Form 1014.)

Form of certificate to be presented with coupons or interest, or other income orders, detached from bonds or other obligations owned by partnerships or firms of foreign countries.

I, ..., a member of the firm or partnership of ..... of ....., and residing at ....., do solemnly
(Give full address.)

declare that the said partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the .....,
(Give name of debtor.)

known as ....., from which were detached the
(Describe the particular issue of bonds.)

accompanying interest coupons, due ....., 191.., amounting to $.....

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or upon which there matured ....., 191–, $..... of registered interest, or is the owner of ....., upon which there has
(Property or investments.)
accrued ....., 191–, $..... of income, and that all the members of said firm or partnership, except.....,
(Give name and address of partners not nonresident aliens.)
are nonresident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest.

Name of partner signing.....
For .....
(Name of partnership.)
Address.....

Date: ....., 191–.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1906.)

Income tax.

Supplemental regulations designating guardians, trustees, executors, administrators, agents, etc., as the "source" for purpose of collecting income tax and as to making annual and list returns and withholding tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity *hereinafter referred to and known as the fiduciary*, who hold in trust an estate of another person or persons shall be designated the "source" for the purpose of collecting the income tax, and by filing the following notice with other debtors or withholding agents, said fiduciary shall be exempt from having any income due to them as such, withheld for any income tax by any other debtor or withholding agent.

Other debtors or withholding agents, upon receipt of this notice, shall refrain from withholding any part of such income from said fiduciary and will not, in such case, be held liable for normal tax of 1 per cent due thereon. The form of notice to be filed with the debtor or withholding agent by the fiduciary shall be substantially as follows:

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(Form 1015.)

Form of certificate to be filed with debtor or withholding agents by fiduciaries.

The following form of certificate should be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source.

I (we) do solemnly declare that I (we)..... am (are)
(Name fiduciary.)

the duly authorized ..... for the bene-
(Indicate in what capacity acting.)

ficiaries of the estate or trust of ....., which estate or trust is entitled to the income from $..... bonds of the denominations of $..... each, Nos. .....
.....
.....
.....
of the.....
(Give name of debtor.)

known as ..... bonds,
(Describe the particular issue of bonds.)

from which were detached the accompanying coupons, due ..... 191–, amounting to $....., or upon which there has matured ..... 191–, $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued ..... 191–, $..... of income.

Acting for and in the capacity as stated herein, I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the law, of withholding and paying the income tax due, for which I (we) may be liable, and acting in said fiduciary capacity as stated herein, I (we) do hereby claim exemption from having the normal tax withheld from said income.

....., ...
(Name.) (Capacity in which acting.)

Address: .....

Date: ..... 191...

RETURNS MADE BY FIDUCIARY AGENTS.

Said fiduciaries shall, on or before March 1 of each year, when the annual interest of any beneficiary in said income is in excess of $3,000, make and render a return of the income of the person or persons for whom they act to the collector of internal revenue of the district in which the fiduciary resides.

This return shall give an itemized statement of the gross income and deductions claimed and shall be in the same form as prescribed for annual return made by individuals.

Said fiduciary acts for and in behalf of the beneficiaries of said trust, and the annual return required as above in behalf of said beneficiaries has reference only to the income accruing and payable

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through said fiduciary, and not the income of said beneficiaries from other sources, unless the said fiduciary is legally authorized to act for said beneficiaries in their individual capacity, in which case said fiduciary, acting as duly authorized agent of the individual, shall also make the personal annual return as provided by law.

There shall accompany the annual return of said fiduciary a list giving the name and full address of each beneficiary and the share of said income to which each may be entitled.

LIST RETURNS FILED BY FIDUCIARY AGENTS.

Fiduciary agents, in addition to the annual return of income required by these regulations, shall make an annual list return, as provided by regulations for withholding agents, whenever payments of income to any beneficiary is in excess of $3,000. Said list return shall be made on or before March 1 of each year to the collector of internal revenue for the district in which said fiduciary resides or has his principal place of business, giving name and address of each beneficiary of said trust, to whom annual income in excess of $3,000 is paid, the amount of income paid to each beneficiary, giving source of income, the amount of exemption claimed by each beneficiary, if any, and the amount of income withheld for tax, and the said list return shall be signed by the fiduciary making same, stating in what capacity acting, and give his name and full address.

Fiduciaries having an annual income that is not distributed or paid to the beneficiaries of the trust under which said fiduciary acts shall make an annual list return, as provided herein, and said list return shall show the name and address of each beneficiary having a distributive interest in said income in excess of $3,000, stating the distributive amount of each beneficiary, and shall give all information as required in said list returns, and shall withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said beneficiaries in excess of $3,000, the same as if said income was actually distributed and paid; exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent.

When the fiduciary agents deduct, withhold, and pay the normal tax on undivided annual net income as provided herein, they shall not be required to withhold and pay again the normal tax on said income when actually distributed and paid to said beneficiaries, nor shall the beneficiaries be required again to pay the normal tax on the amounts on which the tax has been paid when such amounts are distributed.

Where the normal tax is withheld and paid by fiduciary agents on undivided annual income, beneficiaries (or their legal representatives) in whose behalf said tax is paid may file notice with said fiduciary and claim the benefit of any annual exemption they may be

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entitled to under paragraph C of the act of October 3, 1913, as provided by regulations, the same as if their distributive interest in said income was actually paid.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1907.)

Income tax.

Supplemental instructions as to acceptance of certificate Form 1000 as originally prescribed in regulations of October 25, 1913; and the original and amended Form 1000 as it has been adapted to the use of fiduciary agents; and certificate Forms 1001, 1003, and 1004 as they have been adapted to the use of foreign organizations and partnerships.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 26, 1913.

Certificates of ownership, Form 1000, as originally prescribed in regulations of October 25, 1913, shall be accepted by debtors or withholding agents when properly filled in and signed by the owner of the bonds or his duly authorized agent until December 10, 1913, and after that date only the amended Form 1000, as prescribed by regulations, shall be accepted.

Form 1000, original and amended, as it has been adapted to the use of guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in a fiduciary capacity, when properly filled in and signed and giving the information required by the regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for fiduciary agents are issued, and for 30 days thereafter.

Forms 1001, 1003, and 1004, as they have been adapted to the use of foreign organizations and foreign partnerships, when properly filled in and signed and giving the information required by regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for foreign organizations and foreign partnerships are issued, and for thirty days thereafter.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

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(T. D. 1908.)

Income tax.

Regulations prescribing form of certificate to be furnished by foreign organizations not engaged in business in the United States and not subject to the income tax on interest or other income collectible at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

The certificate to be furnished by foreign organizations not engaged in business in the United States shall be in substantially the following form:

(Form 1016.)

Certificate to be furnished by foreign organizations not subject to tax on interest or other income at source.

I, ..., the ..... of the
(Give name.) (Give official position.)
....., a ..... of
(Name of organization.) (Character of organization.)
....., located at .....
(Country.) (Post-office address.)
do solemnly declare that said .....
(Give name of organization.)
is a foreign organization, not engaged in business in the United States, and is the owner of $..... bonds of the denomination of $..... each, Nos. .....
.....
.....
of the ....., known as .....,
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $....., of registered interest, or is the owner of .....
(Property or investments.)
upon which there was accrued ....., 191–, $..... of income, and that under the provisions of the income-tax law of October 3, 1913, said organization being a foreign organization, said interest or income is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Date ....., 191...
Address .....
(Post office.)

Name .....
.....
(Official position.)
Of .....
(Name of organization.)

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913:
W. G. MCADOO,
Secretary of the Treasury.

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(T. D. 1909.)

Income tax.

License required for collection of income received from foreign countries.—Supplemental regulations as to making application, filing bond, and issuing license to collecting agencies of income from foreign countries.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc.,

(*a*) for or in payment of interest upon bonds issued in foreign countries, and

(*b*) upon foreign mortgages or like obligations, and

(*c*) for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries,

who are required by law to obtain a license from the Commissioner of Internal Revenue, shall make application to the collector of internal revenue for the district in which they do business, for such license in the following form:

FORM OF APPLICATION FOR LICENSE FOR THE COLLECTION OF INCOME FROM FOREIGN COUNTRIES.

(Form 1017. United States Internal Revenue.)

Application for license for collection of income from foreign countries.

State of.....
County of.....

The undersigned, ... of .....
(Name.) (Office.)
.....
(State name of person, firm, or corporation.)
being duly sworn according to law, declares that on and after the.....day of .....,191.., {he / we} intend.. to engage in the business of collecting foreign income payments of interest or dividends by means of coupons, checks, or bills of exchange. The aggregate amount of *annual* collections of such foreign income at the principal and branch offices is estimated at $.....

The location of the principal and branch offices is as follows:
Principal office.....
Branch offices.....
.....
(If a firm, state names of members).....
.....

Said person firm. or corporation is now engaged in business as.....
.....and desires to conduct the business of collecting foreign income at the

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above address or addresses, and hereby makes application for the license required to be secured by persons, firms, or corporations engaging in the business of collecting income from foreign countries under the provisions of paragraph E of Section II of the income-tax law of October 3, 1913, and I (we) hereby promise and pledge myself (ourselves) to comply strictly with the provisions of said law and the rules and regulations of the Treasury Department which have been or may hereafter be issued in respect to the collection and payment of such foreign income.

Signed.....

for.....
(Name of firm or corporation.)

Sworn to before me this.....day of.....191...

.....

The collector of internal revenue, upon receipt of such application, shall satisfy himself that the person, firm, or corporation making application is considered to be of good character and business standing and may require that he or they shall be able to show a financial rating in one or more of the recognized mercantile agencies of the United States, equal to at least one-tenth of the estimated amount of annual collections of foreign income as stated in the application.

The collector of internal revenue having thus satisfied himself of the business and financial reliability of the person, firm, or corporation making application for license, may issue the license without requiring a bond for the faithful performance of duty and compliance with the law and regulations.

In cases where the person, firm, or corporation shall fail to satisfy the collector of internal revenue of his or their business or financial reliability, the collector may refuse to issue license or may issue a license upon the applicant filing a surety bond satisfactory to the Commissioner of Internal Revenue for a penal sum equal to 2 per cent of the estimated amount of collections stated in the application, the minimum penal sum, however, to be $1,000, and the maximum not in excess of $100,000.

The bond, when required, shall be executed in duplicate, one of which shall be retained in the office of the collector of internal revenue with whom the bond is filed, and the other shall be forwarded by the collector to the Commissioner of Internal Revenue at Washington, D. C.

The form of license to be issued shall be as follows:

Form 1010. No. ....

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

LICENSE FOR COLLECTION OF FOREIGN INCOME.

....., located and doing business at ....., and engaged in the business of ....., having made application in accordance with the provisions of Section II of the act of October 3, 1913, and the regulations made in pursuance thereof, is hereby licensed to accept for collection coupons, checks, and bills of exchange for or in payment of interest upon bonds issued

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in foreign countries and upon foreign mortgages or like obligations, and for the dividends upon stock of foreign corporations, foreign joint-stock companies or associations, or foreign insurance companies engaged in business in foreign countries, from ....., 191.., until revoked.

This license will not be valid until countersigned by the collector of internal revenue for the district in which issued.

.....

Countersigned: *Commissioner of Internal Revenue.*

.....
(Collector.)
..... Dist., ...

This license, made up in the form of bound books containing 50 each, with appropriate stubs, will be furnished in blank to the collectors of internal revenue, with the facsimile signature of the Commissioner of Internal Revenue thereon, and shall not be valid until countersigned by the collector of internal revenue by whom issued.

This license may be issued without cost to the persons to whom issued and shall continue in full force until revoked. Failure to give or renew the bond in cases where a bond is required will automatically revoke the license.

In cases where licenses are issued without bond, the collector shall, at stated yearly periods, inquire into and satisfy himself of the financial responsibility of all licensees.

When any person, firm, or corporation has branch offices and desires to collect said foreign interest or dividend income through said branch offices, the application for license or licenses shall be made (and bond furnished, when a bond is required) by the person, firm, or corporation through its principal office for its branch office or offices.

The bond in such cases shall be based on the total amount of such foreign business transacted by both the home office and its branch office or offices.

This application for licenses shall be made (and bond furnished when bond is required) to the collector of internal revenue for the district in which the principal or home office is located. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the Bureau of Internal Revenue are complied with to the satisfaction of the said collector, then said collector shall certify this fact to the collector of internal revenue for the district in which the branch office for which the license is desired is located, and the collector to whom this certification is made shall thereupon issue a license as provided herein to such branch office.

No bond will be required in any case for the month of December, 1913, but the required license may be issued by collectors of internal revenue immediately upon receipt of the blank licenses in all cases

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where the applications for licenses which may have been filed shall have been duly approved.

The bond, if required, must be filed for the calendar year 1914 and for each calendar year thereafter.

All bonds must be renewed or new bonds furnished on or before January 1 of each successive year.

The applications for these licenses and the stubs of the licenses issued shall be retained and preserved in the offices of the collectors of internal revenue.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1910.)

Income tax.

Irrigation and reclamation assessment districts are not political subdivisions of the State nor are they public utilities exercising any essential governmental functions accruing to any State or Territory, within the meaning of the Federal income-tax law. Interest or income from bonds or other obligations of such districts is not exempt from the income tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 4, 1913.

SIR: In reply to your letter dated November 14, 1913, with which was forwarded copies of the California State laws with respect to the irrigation and reclamation districts of California, and in which you set forth at length the status of such irrigation and reclamation districts, and in which the question is raised as to whether the interest derived from bonds issued under authority of this State to finance such irrigation and reclamation projects is subject to the income tax, you are informed as follows:

It appears that these irrigation and reclamation districts are created by special or general State laws which provide that their organization be perfected upon petitions signed by the required number of holders of title, or evidence of title, to lands within such proposed districts, and when such districts are thus created, bonds to secure funds for the necessary improvements are issued and the interest charges thereon are met by taxes specifically levied upon the lands benefited by the improvements.

The vote necessary to secure the issue of bonds is confined to the owners of real property, and neither the franchises, benefits, nor

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burdens are extended to or imposed for the general welfare of all the people inhabiting such districts.

It would appear, therefore, that such districts are not created for the general welfare or as public utilities in the administration of government for the benefit of all the people.

The income-tax law provides "that in computing net income under this section, there shall be excluded the interest upon the obligations of a State or any political subdivision thereof." The law further provides:

> There shall not be taxed under this section any income derived from any public utility or from the exercising of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia.

The law also provides that in computing the net income of a person, no deduction shall be allowed for taxes assessed against local benefits, nor for any amount paid out for betterments made to increase the value of any property or estate.

The question at issue, therefore, would appear to depend entirely upon whether the irrigation and reclamation districts under consideration are political subdivisions of a State or whether they are simply assessment districts in which the assessment is made against local benefits, and whether, in the case of the districts under consideration, such districts are not created solely for the purpose of local benefits and for the purpose of confining the expense of such benefits to the particular persons who are benefited thereby.

In the case of Smith *v.* Howell (60 N. J. L., 384), it is held that—

> A political division to whose boundaries a general tax may be confined is a division of the State with its inhabitants organized for the public advantage and not in the interest of particular individuals or classes, the chief design of which is the exercise of governmental functions, and to the electors residing within which is, to some extent, committed the power of local government.

In State *v.* Englewood Drainage, etc., Commissioners (41 N. J. L., 154), it is held that such political subdivision—

> Does not include a sewerage, drainage, and water district under a board to be elected every five years by male and female resident landowners in fee, such board being invested with some control over a defined territory, but having no concern with the inhabitants, such district being formed, not for public advantage, but in the interest of a particular class—the landowners—and the chief end of which is not the government of the persons and things within its territory, but mere land improvement at the expense of the land either by general tax or special assessment, and the electors of which district have no voice whatever in its corporate affairs.

It would appear, therefore, that State laws providing for the taxation of certain districts created for a special purpose and for the special benefit of persons residing within, and owning real property within, certain prescribed limits does not create a subdivision of the State, nor are such laws intended to create a subdivision of the State,

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as that term is used in the income-tax law, but such districts are created under authority of the State simply to enable certain groups of citizens of the State to do that which they otherwise could not do without such legal sanction.

State agencies not existing for purely governmental purposes do not fall within any rule exempting the sovereign power of the State or any political subdivision thereof from Federal taxation.

It is, therefore, held that such irrigation and reclamation assessment districts are not political subdivisions of the State within the meaning of the income-tax law, nor are they public utilities exercising any essential governmental functions accruing to any State or Territory, and that the interest or income from the bonds or other obligations of such districts is not exempt from the income tax.

W. H. OSBORN,
Commissioner of Internal Revenue.

COLLECTOR SIXTH DISTRICT, *Los Angeles, Cal.*

(T. D. 1911.)

Income tax.

Supplemental regulations prescribing form of certificate which may be used by fiduciaries, when said fiduciaries do not desire to claim any exemption from having the normal tax of 1 per cent withheld by the debtor organization at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 8, 1913.

Fiduciary agents may, if they so desire, use instead of Form 1015 prescribed in supplemental regulations (T. D. 1906) of November 28, 1913, a certificate in substantially the following form:

(Form 1019.)

Form of certificate to be filed with debtor or withholding agents by fiduciaries when not claiming any exemption, as an alternative to the filing of Form No. 1015 in which exemption is claimed.

The following form of certificate may be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source, as an alternative to the filing of Form No. 1015:

I (we) do solemnly declare that I (we) ..... am (are)
(Name fiduciary.)
the duly authorized ..... for the beneficiaries
(Indicate in what capacity acting.)
of the estate or trust of ....., which estate or trust is entitled to the income from $..... bonds of the denominations of $..... each, Nos.
.....
.....

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.....

of the.....
(Give name of debtor.)

known as ..... bonds, from
(Describe the particular issue of bonds.)

which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there has matured ....., 191.., $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued....., 191.., $..... of income.

Acting for and in the capacity herein stated, I hereby declare that I (we) do not now claim any exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source.

....., ...
(Name.) (Capacity in which acting.)

Date: ....., 191.. .....
(Address.)

When the fiduciary uses the above form of certificate the debtor organization shall be the *source* for the deduction and withholding of the normal tax of 1 per cent, as required by regulations, and fiduciaries receiving the income described in the said certificate from which the 1 per cent normal tax has thus been withheld, shall not be required to again deduct and withhold the normal tax of 1 per cent upon the said income.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved:
W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1912.)

Income tax.

Extension of time to January 15, 1914, for use of Forms 1000 (original and amended), 1001, 1003, and 1004, as provided in T. D. 1907 of November 26, 1913.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., December 8, 1913.

The time in which Forms 1000 (original and amended), 1001, 1003, and 1004, as provided in T. D. 1907, issued November 26, 1913 may be used shall be extended to January 15, 1914.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved:
W. G. McAdoo,
Secretary of the Treasury.

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(T. D. 1913.)

Special excise tax on corporations—Court decision.

1. MINING COMPANIES.

Section 38, act of August 5, 1909, imposing a special excise tax on corporations, applies to mining companies.

2. CHARACTER OF THE CORPORATION TAX ACT.

The corporation tax act of 1909 is not an income-tax law, but imposes an excise tax upon the conduct of business in a corporate capacity, measuring the amount of tax by the income of the corporation.

3. INCOME.

The proceeds of ore mined by mining companies from their properties is income within the meaning of the corporation-tax act.

4. DEPRECIATION.

Mining companies, in making returns of net income, are not allowed to deduct from gross income, on account of depreciation, the difference between the value of the product and the cost of production.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 11, 1913.

The appended decision of the United States Supreme Court in the case of Stratton's Independence (Ltd.) *v.* F. W. Howbert, collector of internal revenue, is published for the information of internal revenue officers and others concerned.

W. H. OSBORN,
Commissioner of Internal Revenue.

SUPREME COURT OF THE UNITED STATES. No. 457. OCTOBER TERM, 1913.

Stratton's Independence (Ltd.) v. F. W. Howbert, Collector of Internal Revenue in and for the District of Colorado.

ON certificate from the Circuit Court of Appeals for the Eight Circuit.

[December 1, 1913.]

Mr. Justice PITNEY delivered the opinion of the court:

This action was brought in the District Court of the United States by Stratton's Independence (Ltd.), a British corporation carrying on mining operations in the State of Colorado upon mining lands owned by itself to recover certain moneys paid under protest for taxes assessed and levied for the years 1909 and 1910 under the provisions of the corporation tax act, being section 38 of the act of August 5, 1909 (36 Stat., 11, 112). The case was tried upon an agreed statement of facts, from which it appears, as to the year 1909, that the company extracted from its lands during the year certain ores bearing gold and other precious metals, which were sold by it for sums largely in excess of the cost of mining, extracting, and marketing the same; that the gross sales amounted to $284,682.85, the cost of extracting, mining, and marketing amounted to $190,939.42, and "the value of said ores so extracted in the year 1909, when in place in said mine and before extraction thereof, was $93,743.43." With respect to the operations of the company for the year 1910, the agreed facts were practically the same, except as to dates and amounts. It does not appear that the so-called "value of the

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ore in place," or any other sum was actually charged off upon the books of the company as depreciation. Upon this state of facts each party moved the court for a directed verdict, at the same time presenting for consideration certain questions of law, and among them the following:

1. Is the value of the ore in place that was extracted from the mining property of the plaintiff during the years in question properly allowable as depreciation in estimating the net income of the plaintiff subject to taxation under the act of Congress of August 5, 1909 (36 Stat., ch. 6, p. 11)?

2. Is the right to such credit affected by the fact that the plaintiff does not carry such items on its books in a depreciation account?

The court directed a verdict in favor of the plaintiff with respect to certain amounts that were undisputed and concerning which no question is now raised, but directed a verdict in favor of the defendant with respect to so much of the taxes paid as represented the value in place of the ore that was extracted during the years in question, overruling the contention that such value was properly allowable as depreciation in estimating the net income of the plaintiff. To this ruling proper exceptions were taken. The resulting judgment having been removed by writ of error to the Circuit Court of Appeals, that court certifies that the following questions of law are presented to it, the decision of which is indispensable to a determination of the cause, and upon which it therefore desires the instruction of this court:

I. Does section 38 of the act of Congress entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909 (36 Stat., p. 11), apply to mining corporations?

II. Are the proceeds of ores mined by a corporation from its own premises income within the meaning of the aforementioned act of Congress?

III. If the proceeds from ore sales are to be treated as income, is such a corporation entitled to deduct the value of such ore in place and before it is mined as depreciation within the meaning of section 38 of said act of Congress?

The principal grounds upon which it is contended that the questions ought to receive answers favorable to the company are expressed in various forms, viz, that mining corporations are *sui generis*, because the natural enjoyment of mining lands necessarily results in the waste of the estate; that the true value thereof is impossible of accurate determination, and hence mining corporations are not included in general classifications of corporations as such classifications are employed in other legislation; that the provisions of section 38 do not fit the conditions of a mining corporation; that such corporations are not in truth engaged in "carrying on business" within the meaning of the act; that the application of the act to them results in a tax upon the capital, while as applied to other corporations it does not result in such a tax, the result being an inequality of operation that is inherently unjust; that the proceeds of mining operations do not represent values created by or incident to the business activities of such a corporation, and therefore can not be a bona fide measure of a tax leveled at such corporate business activities; that the proceeds of mining operations result from a conversion of the capital represented by real estate into capital represented by cash, and are in no true sense income; and that to measure the tax by the excess of receipts for ore marketed over the cost of mining, extracting, and marketing the same is equivalent to a direct tax upon the property, and hence unconstitutional. Next, assuming the proceeds of ore are to be treated as income within the meaning of the act, it is yet insisted that such proceeds result solely from the depletion of capital, and are therefore deductible as depreciation under the provisions of the act.

We do not think it necessary to follow the argument through all its refinements. The pith of it is that mining corporations engaged solely in mining upon their own premises have but one kind of assets, and that in the ordinary use of them the enjoyment of the assets and the wasting thereof are in direct proportion, and proceed *pari passu;* and hence that a mining corporation is not engaged in business, properly

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speaking, but is merely occupied in converting its capital assets from one form into another, and that a tax upon the doing of such a business, where the tax is measured by the value of the property owned by the corporation, would be in excess of the constitutional limitations that existed at the time of the passage of the act of 1909, as laid down in Pollock v. Farmers' Loan & Trust Co. (157 U. S., 429; S. C., 158 U. S., 601.)

The peculiar character of mining property is sufficiently obvious. Prior to development it may present to the naked eye a mere tract of land with barren surface and of no practical value except for what may be found beneath. Then follow excavation, discovery, development, extraction of ores, resulting eventually, if the process be thorough, in the complete exhaustion of the mineral contents so far as they are worth removing. Theoretically, and according to the argument, the entire value of the mine, as ultimately developed, existed from the beginning. Practically, however, and from the commercial standpoint, the value—that is, the exchangeable or market value—depends upon different considerations. Beginning from little, when the existence, character, and extent of the ore deposits are problematical, it may increase steadily or rapidly so long as discovery and development outrun depletion, and the wiping out of the value by the practical exhaustion of the mine may be deferred for a long term of years. While not ignoring the importance of such considerations, we do not think they afford the sole test for determining the legislative intent.

As has been repeatedly remarked, the corporation-tax act of 1909 was not intended to be and is not in any proper sense an income-tax law. This court had decided in the Pollock case that the income-tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to population as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, with certain qualifications prescribed by the act itself. Flint v. Stone-Tracy Co. (220 U. S., 107); McCoach v. Minehill Co. (228 U. S., 295); United States v. Whitridge, Rec'r (decided at this term and not yet reported).

For this and other obvious reasons we are little aided by a discussion of theoretical distinctions between capital and income. Such refinements can hardly be deemed to have entered into the legislative purpose. Of course if it were demonstrable that to read the act according to its letter would render it unconstitutional, or glaringly unequal, or palpably unjust, a reasonable ground would exist for construing it according to its spirit rather than its letter. But in our opinion the act is not fairly open to this criticism. It is not correct, from either the theoretical or the practical standpoint, to say that a mining corporation is not engaged in business, but is merely occupied in converting its capital assets from one form into another. The sale outright of a mining property might be fairly described as a mere conversion of the capital from land into money. But when a company is digging pits, sinking shafts, tunneling, drifting, stoping, drilling, blasting, and hoisting ores, it is employing capital and labor in transmuting a part of the realty into personalty and putting it into marketable form. The very process of mining is, in a sense, equivalent in its results to a manufacturing process. And, however the operation shall be described, the transaction is indubitably "business" within the fair meaning of the act of 1909; and the gains derived from it are properly and strictly the income from that business; for "income" may be defined as the gain derived from capital, from labor, or from both combined, and here we have combined operations of capital and labor. As to the alleged inequality of operation between mining corporations and others, it is of course true that the revenues derived from the working of mines result to some extent in the exhaustion of the capital. But the same is true of the earnings of the human brain and hand when unaided by capital, yet such earnings are commonly dealt with in legislation as income. So it may be

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said of many manufacturing corporations that are clearly subject to the act of 1909, especially of those that have to do with the production of patented articles; although it may be foretold from the beginning that the manufacture will be profitable only for a limited time, at the end of which the capital value of the plant must be subject to material depletion, the annual gains of such corporations are certainly to be taken as income for the purpose of measuring the amount of the tax.

It seems to us that the first two questions certified must be answered in the affirmative principally for two reasons. First, because mining corporations are within the general description of section 38, which comprises "*every corporation*, joint-stock company, or association *organized for profit, and having a capital stock represented by shares*, * * * and *engaged in business* in any State or Territory of the United States": and, secondly, because the act *specifies those classes of corporations that are to be exempt* from its operation and mining corporations are not among them. Those exempted are labor, agricultural or horticultural organizations, fraternal beneficiary societies, orders or associations operating under the lodge system, domestic building and loan associations, corporations and associations organized and operated for religious, charitable, or educational purposes, etc. Moreover, the section imposes "a special excise tax with respect to the carrying on or doing business by such corporation," etc. That mining companies are doing business, within the fair intent and meaning of this clause, seems to us entirely plain, for reasons already given. The conduct of such business results in profit, for it can not be seriously contended that the ores are not worth more at the mine mouth than they were worth in the ground, *plus* the cost of mining. Corporations engaged in such business share in the benefits of the Federal Government, and ought as reasonably to contribute to the support of that Government as corporations that conduct other kinds of profitable business.

As to what should be deemed "income" within the meaning of section 38, it of course need not be such an income as would have been taxable as such, for at that time (the sixteenth amendment not having been as yet ratified) income was not taxable as such by Congress without apportionment according to population, and this tax was not so apportioned. Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the Government. In Flint *v.* Stone-Tracy Co. (220 U. S., 107, 165) it was held that Congress in exercising the right to tax a legitimate subject of taxation as a franchise or privilege was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted. And from this point of view it makes little difference that the income may arise from a business that theoretically or practically involves a wasting of capital.

Moreover, Congress evidently intended to adopt a measure of the tax that should be easy of ascertainment and simply and readily applied in practice. The act prescribed that the tax should be "equivalent to one per centum upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations," etc., or, with respect to foreign corporations, "upon the amount of net income over and above $5,000 received by it from business transacted and capital invested within the United States," etc. And the net income was to be ascertained by taking, first, the "gross amount of the income of such corporation * * * received within the year from all sources," or, in the case of foreign corporations, "from business transacted and capital invested within," etc., and deducting therefrom losses sustained, interest paid, etc.; and the return was to be made under oath by the president and treasurer

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or other officers having like duties, indicating in the clearest manner that it was to set forth *data* that with proper accounting would appear upon the books of the corporation. We have no difficulty, therefore, in concluding that the proceeds of ores mined by a corporation from its own premises are to be taken as a part of the gross income of such corporation. Congress, no doubt, contemplated that such corporations, amongst others, were doing business with a wasting capital, and for such wastage they made due provision in declaring that from the gross income there should be deducted (*inter alia*) "all losses actually sustained within the year," including "a reasonable allowance for depreciation of property, if any," etc.

This brings us to the third question, which is whether such a mining corporation is entitled to deduct the value of ore in place and before it is mined as depreciation within the meaning of section 38. This question, however, is to be read in the light of the issue that is presented to the Circuit Court of Appeals for determination, as recited in the certificate. From that certificate it appears that the case was submitted to the trial court and a verdict directed upon an agreed statement of facts, and in that statement the gross proceeds of the sale of the ores during the year were diminished by the moneys expended in extracting, mining, and marketing the ores, and the precise difference was taken to be the value of the ores when in place in the mine.

That we do not misconstrue the certificate, and that, on the contrary, the parties advisedly adopted this definition of "value of the ore in place," is apparent not only from the form of the agreed statement of facts, but from the arguments presented here in behalf of the plaintiff. The contention is that if the proceeds of ore sales are to be treated as income, the value of the ore in place and before it is mined is to be deducted as depreciation, and that such value is to be arrived at by the process indicated. Briefs submitted in behalf of *amici curiæ* have suggested other modes for determining depreciation; but plaintiff stands squarely upon the ground indicated by the certificate, as the following excerpts from the brief will show:

Assuming, then, that the proceeds of ore are to be treated as income within the meaning of the act, we submit that *such proceeds result solely from depletion of capital* and are therefore deductible as depreciation under the provisions [of the act] set out above. * * * And we contend that if a part of the capital assets are removed and sold, the property, as it originally stood, is actually depreciated in value to the exact extent of such removal. As an actual matter of experience, the original cost of the property must, from its very nature, be highly speculative. The values in the property are invisible and impossible of determination. They may be worth many times the cost, or they may be worth nothing. * * * The value of the ore in sight does represent a part of the capital, but there is no warrant for limiting it to this amount, nor is there any warrant for limiting the value of ore bodies thereafter discovered in any case to a standard fixed before their discovery, and therefore, of necessity, purely conjectural. * * * The true capital of a mining corporation is the true value of the minerals within the limits of its properties, irrespective of developed ore bodies or those known to exist at any one moment. Investigation or development may demonstrate the existence of values theretofore unknown, but this results in no addition to the actual capital. It remains the same as it was before. * * *

And again:

With every dollar's worth removed, the land from which it is taken contains that much less of value; the corporation owns precisely that much less real property than it possessed before; for every dollar of cash received it relinquishes an equivalent amount of ore in place, and makes no gain or profit by the exchange.

Reading these extracts in connection with what is contended respecting the first and second questions—to the effect that mining corporations are not "doing business," but are merely converting their capital assets from one form into another—it is clear that a definition of the "value of the ore in place" has been intentionally adopted that excludes all allowance of profit upon the process of mining, and attributes the entire profit upon the mining operations to the mine itself. In short, the parties propose to estimate the depreciation of a mining property attributable to the extraction of ores according to principles that would be applicable if the ores had been removed by a trespasser.

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It is at the same time obvious that any method of stating the account that excludes all element of gain from the process of mining must, through one process or another, exempt mining companies from liability to tax under the act of 1909 with respect to their mining operations. And so an affirmative answer to the third question as propounded would be the same in effect as an affirmative answer to the first or the second. For it is a matter of little or no moment whether it is to be said (a) that mining corporations are not "engaged in business" at all, or (b) that they are engaged in business but the proceeds of ore mined are not income, or (c) that such proceeds are income, but that there must be allowed as depreciation all that part of the proceeds which remains after paying the bare outlays of the business. In either case mining corporations would be exempt from the tax.

In our opinion there are at least two insuperable obstacles in the way of returning an affirmative answer to the third question as certified.

In the first place, it is fallacious to say that, whatever may have been the original cost of a mining property or the cost of developing it, if in fact it afterwards yield ores aggregating many times its original cost or market value, this result merely proves and at the same time measures the intrinsic value that existed from the beginning. We are here seeking the correct interpretation and construction of an act of legislation that was, at least, designed to furnish a practicable mode of raising revenue for the support of the Government, and to do this in part by imposing annual taxes upon corporations organized for profit and by measuring the amount of the contribution to be required from each corporation according to its annual income. The act deals with corporations engaged in actual business transactions and presumably conducted according to ordinary business principles. It was of course contemplated that the income might be derived from the employment of property in business, and that this property might become more or less exhausted in the process; and because of this, a reasonable allowance was to be made for depreciation of it, if any. But plainly, we think, the valuation of the property and the amount of the depreciation were to be determined not upon the basis of latent and occult intrinsic values, but upon considerations that affect market value and have their influence upon men of affairs charged with the management of the business and accounting of corporations that are organized for profit and are engaged in business for purposes of profit.

And, secondly, assuming the depletion of the mineral stock is an element to be considered in determining the reasonable depreciation that is to be treated as a loss in the ascertainment of the net income of a mining company under the act, we deem it quite inadmissible to estimate such depletion as if it had been done by a trespasser, to whom all profit is denied.

With respect to the proper measure of damages where ore has been unlawfully mined by one person upon the land of another, there is much conflict of authority. Different modes of determining the damages have been resorted to, dependent sometimes upon the form of the action, whether trespass or trover; sometimes upon whether the case arose at law or in equity; and often upon whether the trespass was willful or inadvertent. See Woodenware Co. *v.* United States (106 U. S., 432) and cases cited; Benson Mining Co. *v.* Alta Mining Co. (145 U. S., 428, 434); Pine River Logging Co. *v.* United States (186 U. S., 279, 293); United States *v.* St. Anthony R. Co. (192 U. S., 524, 542); Martin *v.* Porter, 1839 (5 M. & W., 352); Jegon *v.* Vivian, 1871 (L. R., 6 Ch., 742, 760; 40 L. J., Ch. 369; 19 W. R., 365); Livingstone *v.* Rawyards Coal Co., 1880 (5 App. Cas., 25, 34; 42 L. T., N. S., 334); Coal Creek M. & M. Co *v.* Moses (15 Lea (Tenn.), 300; 54 Am. Rep., 415); Winchester *v.* Craig (33 Mich., 205). See also English and American Notes to Martin *v.* Porter, and Jegon *v.* Vivian (17 Eng. Rul. Cas., 873, 876, etc.). We are not at this time concerned with this vexed question, beyond saying that the rules applicable to trespassers can have only a modified application to the case of a mine owner conducting mining operations upon its own lands where the question is, What is the income derived from the business? And the incidental question, What is the reasonable depreciation, if any, of the mining property?

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What has been said necessitates a negative answer to the third question as certified. And we shall not go further into the question of depreciation. The case comes here under section 239, Judicial Code (derived from sec. 6 of the Evarts Act, 26 Stat., 828, ch. 517). It is established that in the exercise of this jurisdiction this court, unless it see occasion to require the whole record to be sent up for consideration, is to make answer respecting the several propositions of law that are certified, and is not to go into questions of fact or of mixed law and fact. Our rule 37 requires that the certificate shall contain a proper statement of the facts upon which the questions of law arise, and we deal with the facts as thus certified, and not otherwise. Graver v. Faurot (162 U. S., 435, 437); Cross v. Evans (167 U. S., 60, 63); United States v. Union Pacific Railway (168 U. S., 505, 512); Emsheimer v. New Orleans (186 U. S., 33); Cincinnati-Hamilton Railroad v. McKeen (149 U. S., 259).

It would therefore be improper for us at this time to enter into the question whether the clause, "a reasonable allowance for depreciation of property, if any," calls for an allowance on that account in making up the tax, where no depreciation is charged in practical bookkeeping; or the question whether depreciation, when allowable, may properly be based upon the depletion of the ore supply estimated otherwise than in the mode shown by the agreed statement of facts herein; for to do this would be to attribute a different meaning to the term "value of the ore in place" than the parties have put upon it, and to instruct the Circuit Court of Appeals respecting a question about which instruction has not been requested and concerning which it does not even appear that any issue is depending before that court.

The first and second questions certified will be answered in the affirmative, and the third question will be answered in the negative.

Mr. Chief Justice White, Mr. Justice McKenna, and Mr. Justice Holmes dissent with respect to the answer made to the third question.

(T. D. 1914.)

Income tax.

Supplemental regulations prescribing how itemized monthly list returns and annual list returns of all coupon and registered interest payments on which the normal tax of 1 per cent was withheld shall be made, pursuant to regulations for the administration of section 2 of the act of October 3, 1913.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., December 9, 1913.

Debtors or withholding agents are required by regulations made in pursuance to section 2, act of October 3, 1913, to make both a monthly and an annual list return.

The required monthly list return shall give a list of all coupon or interest payments made, on which the normal tax of 1 per cent was deducted and withheld and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld, and shall be made in substantially the following form:

(Form 1012. United States Internal Revenue.)

Monthly list return of amount of normal income tax withheld at the source.

Filed by.....

(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages or deeds of trust, or other similar obligations

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of corporations, joint-stock companies, or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we)..... of .....
(Name.) (State address in full.)

the duly authorized withholding agent of.....
(State name of debtor organization.)

located at ....., do solemny swear (or affirm) that the
(Address in full.)

following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191.., on the

..... bonds (or other obligations) of the
(Describe the particular issue of bonds.)

....., and there are herewith inclosed all
(Name of debtor organization.)

certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described.

Name.	Address in full.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total for months		.....	.....	.....	.....
Amount of tax remitted herewith (if any) to collector					.....

To....., Collector.
.....District of.....
.....
(Address.)

Sworn to and subscribed before me this..... day of.....191...

Signed:
.....
.....
.....
(Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the collector of internal revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same i making monthly list returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Form 1012*a*. Includes all heading Form 1012, but omits bottom.

Form 1012*b*. With box heading Form 1012, omits head and tail.

Form 1012*c*. Omits heading Form 1012, includes tail.

Form 1012*d*, when necessary to be used, shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same, as fully as if each list attached to the summary was signed and sworn to separately.

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The said Form 1012*d* shall be in substantially the following form:

(Form 1012d. United States Internal Revenue.)

Summary of monthly list return of amount of normal income tax withheld at the source.

Filed by.....
(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint stock companies, or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we).....of....., the duly
(Name.) (State address in full.)
authorized withholding agent of....., located
(State name of debtor organization.)
at ....., do solemnly swear (or affirm) that the
(Address in full.)
following is a true and complete return of all coupon and interest payments as above described made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month of....., 191 , on bonds (or other
(date.)
similar obligations) of the....., as fully set forth in
(Name of debtor organization.)
detail, on lists attached hereto, said lists, Form 1012, and this summary, constituting the *Monthly List Return of Normal Income Tax Withheld at the Source* as required by the regulations; and that there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described, and that said withholding agent has paid no coupons or orders for registered interest not accompanied by the certificates of ownership as required by Treasury regulations.

Description of obligation.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
	$	$	$	$
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Totals for month.....	.....	.....	.....	.....
Amount of tax remitted herewith (if any) to collector..	.....	.....	.....	.....

To..... Sworn to and subscribed Signed:
Collector. before me this.....
....District of..... day of....., 191... .....
....
(Address.) (Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

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The annual list return to be made by debtors or withholding agents of the normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations shall be made on or before March 1 of each calendar year and in substantially the following form:

(Form 1013. United States Internal Revenue.)

Annual list return of amount of normal income tax withheld at the source from interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies.

Filed by.....
(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before March 1, showing the totals of each monthly return on Form 1012, and their aggregate totals for the preceding calendar year.

I (we) ..... of ....., the
(Name.) (State address in full.)

duly authorized withholding agent of .....
(State name of debtor organization.)

located at ....., do solemnly swear (or affirm) that the
(State address in full.)

following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization or for which it is liable as withholding agent as reported on Form 1012, and their aggregate totals for the year ended December 31, 191

Month.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.	Amount of tax remitted to collector.	Balance of tax due.
	$	$	$	$	$	$
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Aggregate Totals for year						

To..... Collector.

.....District of.....

..... (Address.)

Sworn to and subscribed before me this.....

day of.....191..

.....

Signed:

.....

.....
(Capacity in which acting.)

The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be re-

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quired in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint stock companies, or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

All substitute certificates of collecting agents authorized by regulations that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns, debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds.

Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent, *when the owners of the bonds are not subject to having the normal tax withheld at the source*, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for his or its district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received by him or it.

All forms of monthly and annual list returns herein provided for shall be 10½ inches wide and 16 inches from top to bottom.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved December 9, 1913:
W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1915.)

Income tax.

Supplemental regulations prescribing forms of certificates to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., December 5, 1913.

Subject to the provisions of the regulations in T. D. 1903, dated November 28, 1913, collecting agents may substitute Form 1000a, properly filled in and numbered, for the certificate of the owner on Form 1000.

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When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1001, said substitute certificate sha' be in substantially the following form:

(Form 1001a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When owner is a domestic organization not subject to taxes on income at source.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No.....

I (we) .....do solemnly declare that the owner of
(Name of collecting agent.)
$.....bonds of the....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due....., 191..,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1001, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..," and
(Name of collecting agency.) (Date.)
that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed, and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1003, said substitute certificate shall be in substantially the following form:

(Form 1003a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When said owners are firms or copartnerships in the United States.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$....., bonds of the ....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due ....., 191..,
(Maturity.)

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amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1003, which certificate has been indorsed by me (us) as follows: "Owner's certificate No ....., ..., ..., 191.." and
(Name of collecting agency.) (Date.)
that the name and address of the firm or partnership, and the names of the individual members thereof, and their places of residence were recorded on said original certificate, and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ...., 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

When collecting agents substitute their own certificates in lieu of owner's certificate on Form 1004, said substitute certificate shall be in substantially the following form:

(Form 1004a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When owners are both citizens or subjects and residents of foreign countries.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we)..... do solemnly declare that the owner of $.....
(Name of collecting agent.)
bonds of the....., from which were detached the
(Name of debtor organization.)
accompanying interest coupons due....., 191.., amounting to
(Maturity.)
$....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form *No. 1004*, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191.." and that the owner in said
(Name of collecting agency.) (Date.)
certificate declares that, being a nonresident foreigner, said interest is exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons, or interest; and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

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When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1011, said substitute certificate shall be in substantially the following form:

(Form 1011a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When owners are firms or copartnerships in the United States claiming deduction for tax on account of operating expenses incurred.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the owner of $.....
(Name of collecting agent.)
bonds of the ..... from which were detached the accompanying interest coupons due ....., 191.., amounting to $.....,
(Name of debtor organization.)
(Maturity.)
has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1011, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ...,
(Name of collecting agency.)
....., 191..," and the partnership in said certificate did claim a
(Date.)
deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and did solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed, and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191... to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1014, said substitute certificate shall be in substantially the following form:

(Form 1014a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When owners are firms or copartnerships of foreign countries and claim immunity from income tax.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we), ..., do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ....., from which were
(Name of debtor organization.)

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detached the accompanying interest coupons due ....., 191..,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1014, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....,
....., ..., 191..," and that said certifi-
(Name of collecting agency.) (Date.)
cates declare that said owners are a copartnership and that all the members of the firm or partnership, except partners whose names are recorded thereon, are nonresident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest; and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1015, said substitute certificate shall be in substantially the following form:

(Form 1015a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*When owners are fiduciaries.*)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ....., do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due ....., 191..,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1015, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....,
....., ..., 191..," that said
(Name of collecting agency.) (Date.)
certificate is executed by a fiduciary, and that the fiduciary, acting for and in the capacity as stated therein, has assumed the duty and responsibility imposed upon withholding agents under the law, of withholding and paying the income tax due, for which he (it) may be liable, and that, acting in said fiduciary capacity as stated therein, he (it) did claim exemption from having the normal tax withheld from said income; and I (we) do hereby promise and pledge myself (ourselves) to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191...

Address, ...

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When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1016, said substitute certificate shall be in substantially the following form:

(Form 1016a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(Owners being foreign organization, not subject to the income tax at the source.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)

$..... bonds of the ....., from which were
(Name of debtor organization.)

detached the accompanying interest coupons due ....., 191..,
(Maturity.)

amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1016, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..,"
(Name of collecting agency.) (Date.)

and that under the provisions of the income-tax law of October 3, 1913, the said organization in said certificate declares that it is a foreign organization, and that the said interest or income is exempt from the payment of taxes collectible at the source, which exemption it claims, and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191..

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1018, said substitute certificate shall be in substantially the following form:

(Form 1018a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(Owners being foreign organizations engaged in business in the United States and subject to tax.)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations:

No .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)

$..... bonds of the ....., from which were
(Name of debtor organization.)

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detached the accompanying interest coupons due ....., 191..,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of December 5, 1913, Form No. 1018, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..,"
(Name of collecting agency.) (Date.)
and that under the regulations made in pursuance of Section II, act of October 3, 1913, said organization is subject to the normal tax of 1 per centum per annum upon the amount of net income accruing from business transacted and capital invested with the United States and did therein claim exemption from having the said tax withheld at the source from said income, and I (we) do hereby promise and pledge myself (ourselves) to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent.....

Address.....

Date ....., 191...

All of the forms prescribed herein to be used by collecting agents for substitution in lieu of the owner's certificate, accompanying coupons to be presented for collection, shall be subject to all of the provisions of the regulations as published in T. D. 1903 of November 28, 1913, the same as the said regulations are made to apply to Form 1000a, as given therein.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved:
W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1916.)

Income tax.

Regulations prescribing form of certificate to be furnished by foreign organizations engaged in business in the United States and subject to the income tax on interest or other income collectible at the source.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., December 5, 1913.

Foreign organizations engaged in business within the United States are subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of their income withheld by a debtor or withholding agent.

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The certificate to be furnished by foreign organizations engaged in business in the United States shall be in substantially the following form:

(Form 1018.)

Certificate to be furnished by foreign organizations engaged in business in the United States.

I, ..., the .....,
(Give name.) (Give official position.) (Name of organization.)
a ....., of ....., located at .....,
(Character of organization.) (Country.) (Post-office address.)
do solemnly declare that said ..... is a foreign organization engaged in business in the United States, and is the owner of $..... bonds, of the denomination of $..... each, Nos. .....
(Give name of organization.)
.....
of the ....., known as .....
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due .....,
191.., amounting to $....., or upon which there matured .....,
191.., $..... of registered interest, or is the owner of .....,
(Property or investments.)
upon which there was accrued ....., 191.., $..... of income.

Under the provisions of the income-tax law of October 3, 1913, the said organization is subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States, for which tax it will make its return in due course, but it hereby claims exemption from having the said normal tax of 1 per cent on said income withheld at the source.

Name.....
.....
(Official position.)

Date.....191... Of .....
(Name of organization.)

Address.....
(Post office.)

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1917.)

Income tax.

Extension of time for filing monthly list returns of all coupon and registered interest payments on which the normal tax of 1 per cent was withheld at the source in accordance with the requirements of section 2, act of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 16, 1913.

The time for filing itemized monthly list returns of coupon and registered interest payments for the month of November, 1913,

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which are required by regulations to be filed on or before December 20, 1913, is extended to January 5, 1914.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved, December 16, 1913:
W. G. McADOO,
Secretary of the Treasury.

(T. D. 1918.)

Corporation tax—Insurance companies—Decision of court.

1. INSURANCE COMPANIES.

The corporation in question is an insurance company within the meaning of the law and subject to the tax imposed by section 38, act of August 5, 1909.

2. FRATERNAL BENEFICIARY SOCIETIES.

There is no exemption in the law in favor of insurance companies other than fraternal beneficiary societies operating under the lodge system (see T. D. 1738). Fraternal beneficiary societies defined.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 16, 1913.

The appended decision of the United States District Court for the Northern District of Ohio, Eastern Division, in the case of Commercial Travelers' Life and Accident Association *v.* Rodway, collector, is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, Jr.,
Acting Commissioner of Internal Revenue.

DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION. No. 8292.

Commercial Travelers' Life and Accident Association v. *A. N. Rodway, collector of internal revenue.*

[December 3, 1913.]

MEMORANDUM on demurrer to petition.

KILLITS, *Judge:* The plaintiff has paid under protest to the collector of customs of this district the corporation excise tax required by the act of 1909 upon its net income for the year 1910 and now seeks by this action to recover back such payment. The grounds upon which it founds its right of action are stated in these parts of its complaint, upon which facts it claims the right of recoupment:

That plaintiff company is organized by virtue of the statutes of Ohio as a mutual protective association; that its only source of revenue is the assessments paid by its members; that after the losses sustained during any year are paid by the association and the general expenses of the company for rents, bookkeeping, salaries, etc., are paid, the surplus, if any, in the hands of the treasurer is paid into a reserve fund, which fund is the sole and only resource of the company for the payment of losses should any occur in excess of the amount of income during any year; that this reserve fund is the sole and only guaranty and protection that the members of the association have, after the payment of assessments, that losses sustained by members shall be paid; that it is necessary that the net income each year be paid into this reserve fund

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in order to have on hand sufficient resources to meet the outstanding liabilities of the association; that the total membership of the association on December 31, 1910, was 3,601; that the outstanding liabilities for said association for policies in force on said date was $7,096,000; that the reserve fund on December 31, 1910, including the said net income of the year 1910 of $40,354, was $382,875.95; that the said net income of $40,354 does not represent profits of this association, but a balance left in its hands from assessments on its members, after paying losses and expenses of the association for the year 1910, and is an increment to the reserve fund, against which fund there are outstanding liabilities as before alleged; that the plaintiff is not engaged in business for profit, but its only function is to receive payments from its members and make distribution thereof to members who may sustain injuries or to representatives of members in case of death of members; that members of the plaintiff association do not share in any way in the net income of the association by way of receiving dividends or proportionate shares of said net income; that plaintiff is not subject to the provisions of the law known as the corporation tax, being act of Congress approved August 5, 1909, and especially is not subject to the provisions of section 38 of said act (36 Stat. L., p. 112); that plaintiff is not an organization carrying on or doing business within the meaning of said act of Congress, and by said act it is not contemplated that companies such as the plaintiff and doing the business of plaintiff should be subject to a tax on their net income.

In the brief filed in behalf of the plaintiff, two points are urged upon these facts: First, that the company is within the exception to the operation of the excise act; second, that the business transacted by the company is not such business as comes within the main provisions of the section.

Taking the last proposition first, the statute in its parts pertinent to this situation reads as follows:

Chapter 6, 36 Statutes at Large, page 112, Section 38. "That every corporation, joint-stock company, or association, organized for profit and having a capital stock represented by shares, and every insurance company, * * * organized under the laws of * * * any State * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company," etc.

We do not understand that Congress is here using the words "corporation, joint-stock company or association organized for profit and having a capital stock represented by shares" and "every insurance company" in apposition, but by the use of these particular terms it is intended to define the several classifications or organizations of persons having the authority and attributes of individuality given them by the operation of law to work out corporate purposes, which are to be subject to the excise.

That the plaintiff is an insurance company within the purview of this act is hardly open to question. State ex rel. Graham *v.* Nichols (78 Iowa, 747; 41 N. W., 4); Citizens Life Insurance Co. *v.* Commissioner of Insurance (128 Mich., 85; 87 N. W., 126). The opinion in the latter case is especially full upon this subject, and on the authorities therein relied upon the question seems to be concluded.

If the plaintiff is, therefore, an insurance company under the act, the transactions in which it admits it is engaged constitute "doing business," as the term is used in the act, for that expression unquestionably means the substantial doing of some work or the exercise of some of the functions for which the corporation was created. Beard *v.* Union American Publishing Co. (71 Ala., 60, 62).

It follows, therefore, that unless the plaintiff may establish itself as one of the companies or associations specifically exempt from the operation of the statute in the proviso which is now quoted it is clearly subject to the tax. The proviso reads as follows:

Provided, however, That nothing in this section contained shall apply to labor, agricultural, or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

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By the General Code of Ohio, under which the plaintiff is organized, it appears that it can not claim the privileges and immunities of a fraternal beneficiary society. It avers in its petition that it is a corporation organized and acting under the provisions of sections 9427 to 9461, inclusive, of the General Code of Ohio. These sections constitute chapter 3, subdivision 1, division 3, Title IX, of the Code of Ohio, as officially arranged, and is the chapter which by its title provides for the organization and regulation of mutual protective associations. The initial section, 9427, reads as follows:

A company or association may be organized to transact the business of life or accident or life and accident insurance on the assessment plan for the purpose of mutual protection and relief of its members and for the payment of stipulated sums of money to the families, heirs, executors, administrators, or assigns of the deceased members of such company or association, as the member may direct, in the manner provided in the by-laws. The company also may receive money either by voluntary donation or contribution, or collect it by assessments on its members, and may accumulate, invest, distribute, and appropriate such money in such manner as it deems proper. All accumulations and accretions thereon shall be held and used as the property of the members and in the interest of the members, and not to be loaned to, used, appropriated, or invested for the benefit of any officer or manager of such company or association. No company or association shall issue a certificate for a greater amount than it is able to pay from the proceeds of one assessment. Such company or association shall be subject to the provisions of this chapter.

We submit that the business transacted by the plaintiff, as described in the extract from the petition which we have quoted above, is precisely that outlined and authorized by this section, 9427, and that plaintiff before the court stands, as it pleads, squarely under this section and the subsequent sections of that chapter. Chapter 4 of the same subdivision and title is made up of sections 9462 to 9509, inclusive, and provides for the organization and regulation of fraternal benefit societies as distinct from mutual protective associations. Its initial section, 9462, reads as follows:

Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 5 hereof, is hereby declared to be a fraternal benefit society.

Can it be said that the law of the State from which the plaintiff derives its authority to exist and do business makes it possible that plaintiff, organized as a mutual protective association, can be at the same time a fraternal beneficiary association? We feel that there is but one answer to this question, and that it necessarily follows that this situation of the law of Ohio, in force when plaintiff was organized and when the act of 1909 was passed by Congress, deprives plaintiff of the right to claim to be within the exception written into section 38, which we have quoted above.

This is true whether the words "operating under the lodge system" in the proviso modify simply "associations" or apply to each of the several classifications in the expression "fraternal beneficiary societies, orders, or associations operating under the lodge system." We think that the proper construction applies the words "operating under the lodge system" to each of these classifications, but, whether it does or not, in contemplation of the law of Ohio, the plaintiff is not a "fraternal beneficiary society."

It seems very plain that Congress, in using this expression, did not intend to include within its operation a mutual protective association, such as plaintiff is. A mutual protective association, operating as plaintiff does, is nothing different from a mutual insurance company. A fraternal beneficiary association may be a mutual insurance company, and must be something more. The court should assume that Congress used the term according to its legal significance at the time the act was passed. Grogan *v.* Garrison (27 O. S., 50, 63). This term had been extensively defined, judicially and by statute, before 1909. Berry *v.* Knight Templars and Masons' Life Indemnity Co. (46 Fed., 439, s. c., 8 Circuit Court of Appeals, 50 Fed., 511); National Union *v.*

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Marlow (74 Fed., 775); Corley *v.* Travelers' Protective Association (105 Fed., 854). These cases establish the definition of a fraternal beneficiary society inconsistent with plaintiff's claim that it should be so regarded, and all of them are cases decided long anterior to the passage of the act.

Defining the words "fraternal beneficial" as used in the Missouri Revised Statutes of 1889, Judge Thayer, in National Union *v.* Marlow, *supra*, on page 778 of the report, says:

It is noteworthy that while the phrase "fraternal beneficial" is used in the connection above shown to designate a particular kind of societies or associations that may be incorporated, yet it was not thought necessary to otherwise define the descriptive phrase thus employed. We must accordingly assume that the words "fraternal beneficial" were used in their ordinary sense to designate an association or society that is engaged in some work that is of a fraternal and beneficial character. According to this view, a fraternal beneficial society, within the purview of the Missouri statute, would be one whose members have adopted the same, or a very similar, calling, avocation, or profession, or who are working in unison to accomplish some worthy object, and for that reason have banded themselves together as an association or society to aid and assist one another, and to promote the common cause. The term "fraternal" can properly be applied to such an association, for the reason that the pursuit of a common object, calling, or profession usually has a tendency to create a brotherly feeling among those who are thus engaged. It is a well-known fact that there are at the present time many voluntary or incorporated societies which are made up exclusively of persons who are engaged in the same avocation. As a general rule, such associations have been formed for the purpose of promoting the social, moral, and intellectual welfare of the members of such associations and their families, as well as for advancing their interests in other ways and in other respects.

In Corley *v.* Travelers Protective Association, *supra*, our own Circuit Court of Appeals, construing section 641, Kentucky Statutes, which provides that the words "insurance company" or "insurance corporation," as used in the section, "shall not apply to secret or fraternal societies, lodges, or councils which are under the supervision of a grand or supreme body and secure members through the lodge system exclusively," said:

We think this association comes under the Kentucky statute, unless it is within the exception embodied in section 641 of the statutes. We find nothing in the organization of a secret or fraternal character. We do not find the supervision of a grand or supreme body and members secured by the lodge system exclusively. Not all commercial travelers may become members entitled to the benefits of the insurance. An application is required, setting forth the willingness of each applicant to submit to a physical examination, and waiving all provisions of law now existing or that may hereafter exist preventing any examining or attending physician from disclosing any information acquired while acting in a professional capacity or otherwise, or rendering him incompetent to testify as a witness in any case whatever. The "benefits" are stated at a fixed amount in case of death and certain specific sums for various injuries. It is evident that persons not answering these questions satisfactorily, though otherwise eligible, would be rejected as members. We do not discover in this association the features which characterize associations which the statute exempts from its provisions.

States other than Ohio, Missouri, and Kentucky had written into their statutes a definition of what constitutes a fraternal beneficial society in precisely the same lines. We have noticed Connecticut Public Acts of 1895, page 592; New Hampshire Public Statutes of 1901, page 578; Oklahoma Revised Statutes of 1903, section 3236; Michigan Public Acts of 1893, No. 119. Doubtless other States to which our investigation has not extended have similar provisions. It seems certain, however, that no State has a definition of a fraternal beneficiary association which would include an organization doing but the business of plaintiff and organized as it is; at least, we are unable to find any such, and we think we are justified in holding that at the time this act was passed the class of corporations to which plaintiff belongs was in law entirely distinct from that of fraternal beneficiary associations.

The decision of the Supreme Court in the corporation-tax cases (Flint *v.* Stone-Tracy Co., 220 U. S., 107), in holding that the constitutional limitation requiring uniformity in cases of taxation does not require equal application of the tax to all com-

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ing within its possible operation but is limited to geographical uniformity only throughout the United States, and in deciding that Congress may tax a distinct advantage found in carrying on business in the manner specified in this law over carrying it on by partnerships or as individuals, and that the privilege which plaintiff obtained through its incorporation is that which is the subject of the tax, makes it clear that in passing the act of 1909 Congress was justified in observing and acting upon just such a distinction as is here made.

It can not be said on the facts before us that plaintiff is engaged in some work that is of a fraternal and beneficial character. No more is it so engaged surely than was the National Union in the case in 74 Fed., *supra*, was decided, or the Travelers Protective Association, defending in the case in 105 Fed., *supra*, whose business, as shown by the quotation from the opinion which we have made from the case, proceeded on substantially the same lines as that of the plaintiff here. The absence of profit in the operation of the association is not the criterion, but the want of a fraternal side and object which it is in some measure organized to promote. Such an absence in plaintiff's case is vital to its claim to be within the exception to the statute. It follows that the demurrer should be sustained with exceptions to the plaintiff.

(T. D. 1919.)

Cigars.

Manufacture of cigars in whole of tobacco imported from any one country in bonded manufacturing warehouses, under the provisions of section 4, paragraph M, tariff act of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1913.

To collectors of internal revenue:

In view of the number of inquiries made to this office by collectors and deputy collectors relative to the manufacture of cigars in bond under the provisions of the tariff act of October 3, 1913, that part of section 4, paragraph M of said act relating thereto is here quoted.

That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The regulations prescribed in this statute governing the manufacture and withdrawal for home consumption of cigars made in bonded manufacturing warehouses so far issued will be found in Customs Decision No. 33783, dated October 10, 1913. The Internal Revenue Service, having been given no jurisdiction in the manufacture of such cigars, all persons making inquiries in regard to same should be referred to the nearest collector of customs.

Premises now operated as cigar factories under the internal-revenue laws can be opened as bonded manufacturing warehouses only

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after making proper disposition of all material, cigars, and stamps on hand and closing their accounts as manufacturers under the internal-revenue laws; that is, all tobacco and cigars shall have been removed, leaving only the manufacturing equipment on the premises.

Customs regulations made applicable to the manufacture of cigars in bonded manufacturing warehouses require bonds to be given in triplicate and approved by the collector of internal revenue. Such approval should be given as a matter of course. Collectors of internal revenue may suggest that the penalty of a bond be increased if it is deemed insufficient.

Cigars made in bonded manufacturing warehouses when withdrawn for home consumption will be treated similarly to cigars imported from a foreign country. Sales of stamps to be used in bonded manufacturing warehouses in stamping boxes of cigars for withdrawal for consumption in the United States will be made upon the requisition of the collector of customs in the same manner as stamps are sold to owners or consignees of cigars imported from a foreign country, as provided in Regulations No. 8, revised July 1, 1910, page 62, under the head of "Purchase of stamps."

Extra copies of this decision will be furnished collectors upon requisition to be supplied to persons making inquiry on the subject.

ROBT. WILLIAMS, Jr.,
Acting Commissioner of Internal Revenue.

(T. D. 1920.)

Income tax.

Certificates of ownership heretofore executed, or which may hereafter be executed, by the owners of bonds, etc., or their duly authorized agents, need not be signed with the full Christian name of the owner or agent, but the said owner or agent may use his ordinary or usual business signature.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 20, 1913.

To collectors of internal revenue:

Certificates of ownership, heretofore executed by the owners of bonds, etc., or their duly authorized agents, in compliance with the income-tax regulations, and signed either with the Christian name or the ordinary or usual business signature, and giving the full address of the owner, shall be accepted by debtor organizations or their duly authorized withholding agents.

Hereafter it will not be required that ownership certificates be signed with the full Christian names of the owners by the owners or

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their duly authorized agents, but the said owners or agents may use their ordinary or usual business signatures, provided it identifies them and is accompanied by their complete address.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1921.)

Certificates of deposit.

Instructions to collectors of internal revenue relative to preparation of daily deposit slips and indorsements on certificates of deposit.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 17, 1913.

To collectors of internal revenue:

Collectors will instruct their cashiers and all their deputy collectors who deposit collections to prepare the daily deposit slips on and after January 1, 1914, so as to furnish depositaries with data to be entered on the face of the certificates of deposit in the following prescribed form:

Ordinary collections		$.....
Excise and income tax from corporations	$.....	.....
Income tax from individuals	.....	
Total	.....	.....

New certificates of deposit for internal-revenue collections, providing for this information on the face in the form indicated above, are being prepared and will be furnished to all depositaries handling internal-revenue collections as soon as received from the printer. Until then the depositaries should give this information on the faces of certificates of deposit now in use, Form 1—National Banks, in the manner prescribed above and make no entries whatever on the backs.

In the classification given above "Ordinary collections" will include all moneys received from—

(a) The sale of stamps.

(b) Taxes assessed or assessable on Form 23 of the regular lists.

(c) All items chargeable on Form 58 of said lists.

Excise and income tax from corporations will include:

(a) All corporation excise taxes and corporation income taxes assessed or assessable on Form 23 of the special excise tax lists or Form 23*a* of the corporation excise and income tax lists.

(b) All items chargeable on Form 58*a* of said lists.

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Income tax from individuals will include:

(a) All individual income taxes, both normal and additional, whether paid by the individuals themselves or by withholding agents, assessed or assessable on Form 23*b* of the individual income tax lists.

(b) All items chargeable on Form 58*b* of said lists.

On the backs of the *duplicate* certificates of deposit, before forwarding them to this office, and of the *triplicate*, collectors will list the following items included therein, giving the name of the case in each instance:

Each offer in compromise.

Each offer for real estate.

Gross proceeds of each sale under warrant of distraint (sec. 3187, Revised Statutes).

Gross proceeds of each sale of forfeited property (sec. 3460, Revised Statutes).

Gross proceeds of each sale of old material (sec. 3618, Revised Statutes).

Fines, costs, and judgments.

In making this list the following order must be observed:

1. Each offer in compromise, etc., chargeable on Form 58 of the regular list and after each amount the distinguishing letter, capital R.

2. Each offer in compromise, etc., chargeable on Form 58*a* of the corporation excise and income tax list and after each amount the distinguishing letter, capital C.

3. Each offer in compromise, etc., chargeable on Form 58*b* of the individual income tax list and after each amount the distinguishing letter, capital I.

All previous instructions relative to indorsements on certificates of deposit conflicting with these instructions are hereby rescinded, to take effect on and after January 1, 1914.

ROBT. WILLIAMS, JR.,
Acting Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1922.)

Income tax.

Collection at the source of income tax from certain municipal district or local bonds and other obligations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 24, 1913.

Until January 15, 1914, and thereafter until further instructions are issued, the income derived in the shape of interest from the obli-

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gations, general or special, of any State, or of any county, municipality, or taxing district therein, shall be exempt from the collection of the income tax at the source, whether the payment of such obligation is provided for by general or local taxation or out of a general, special, or separate fund.

Any regulation or ruling of the Bureau of Internal Revenue in conflict herewith is hereby suspended as above provided.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1923.)

Income tax.

Regulations regarding the specific deduction provided for under paragraph C of the provisions of section E of the income-tax law of October 3, 1913, relative to the returns of husband and wife.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 27, 1913.

Every single person and every married person not living with husband or wife in the sense below defined who has a net income exceeding $3,000 per annum is liable to pay the normal income tax under this law, but in making return for such tax may claim an exemption of $3,000 from their total net income.

Husband and wife living together are entitled to an exemption of $4,000 only from the aggregate net income of both, which may be deducted in making the return of such aggregate income for taxation. However, when the husband and wife are separated and living permanently apart from each other, each shall be entitled to the exemption of $3,000.

If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each and the full name and address of both must be shown in such return.

The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

If a wife has a separate estate managed by herself as her own separate property and receives an income of more than $3,000, she may make return of her own income, and if the husband has other

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net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000.

If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law, and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than $4,000.

If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately has an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made otherwise the status at the close of the year.

These regulations hereby supersede the regulations relative to paragraph C of the income-tax law, as prescribed on page 4 of Regulations, part 2, issued under date of October 31, 1913.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1924.)

Denatured-alcohol law.

Manufacture of alcohol free of tax for denaturation only under Section IV, act of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 29, 1913.

To collectors of internal revenue:

The following provisions contained in Section IV, paragraph N, subsection 2, act of October 3, 1913, are published for the information of internal-revenue officers and others concerned:

SUBSECTION 2. That from and after the first day of January, nineteen hundred and fourteen, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury may prescribe, any farmer or association of farmers, any fruit grower or association of fruit growers, or other person or persons

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may manufacture alcohol free of tax for denaturization only, out of any of the products of farms, fruit orchards, or any substance whatever, on condition that such alcohol shall be directly conveyed from the still by continuous closed pipes to locked and sealed receptacles in which the same may be rendered unfit for use as an intoxicating beverage by an admixture of such denaturing materials as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, or where such alcohol is of insufficient proof to be denatured, the same may be transferred in bond from such locked and sealed receptacles to a central distilling and denaturing plant as hereinafter provided.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may authorize the establishment of central distilling and denaturing plants to which alcohol produced under the provisions of this act, free of tax, may be transferred, redistilled and denatured under such regulations, and upon the execution of such notices and bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

That any central distilling and denaturing plant provided for in section two of this act may, in addition to the spirits produced under section one of this act, use any of the products of farms, fruit orchards, or any substance whatever, for the manufacture of alcohol for denaturation only: *Provided*, That at such distilleries the use of cisterns or tanks of such size and construction as may be deemed expedient shall be permitted in lieu of distillery bonded warehouses under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

That any person who under the provisions of this act shall fail to register, or shall falsely register, any still or distilling apparatus used by him, or who shall fraudulently remove or conceal any distilled spirits produced by him, or who shall fail to comply with all the requirements of this act, or any regulations issued pursuant thereto, respecting the production and denaturization of distilled spirits; and any person who shall recover or attempt to recover by redistillization or by any other process or means, any distilled spirits after the same has been denatured, shall, on conviction, for each offense, be fined not more than $5,000 or be imprisoned for not more than five years, or both, and shall in addition thereto forfeit to the United States all real and personal property used in connection therewith.

That subsection two of section thirty-two hundred and forty-four of the Revised Statutes of the United States shall not apply to stills and worms manufactured for use in distilling, provided for in section one of this act, but the manufacturer or owner of such distilling apparatus shall give notice to the collector of internal revenue of the district in which the said apparatus is made or to which it is removed, of each still or worm, manufactured, sold, used, or exchanged under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Section four of the act of March second, nineteen hundred and seven, amendatory of the act of June seventh, nineteen hundred and six, is hereby repealed, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt distillers operating under this act from the provisions of sections thirty-two hundred and eighty-three and thirty-three hundred and nine of the Revised Statutes of the United States, and from such other provisions of existing laws relating to distilleries, including the giving of bonds, as may be deemed expedient by said officials: *Provided, however*, That the Commissioner of Internal Revenue shall assess and collect the tax on any spirits unlawfully produced or produced and not accounted for by any such distiller.

ROBT. WILLIAMS, JR.,
Acting Commissioner of Internal Revenue.

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(T. D. 1925.)

Revised Form 72, cigar manufacturers' monthly return.

Cigar manufacturers' monthly returns Form 72, revised, to be used if received in time by collectors for distribution by manufacturers for making their report for December, 1913, and to be used exclusively by all manufacturers of cigars and cigarettes commencing with return rendered by them for the month of January, 1914, and thereafter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 30, 1913.

To collectors of internal revenue:

Revised Form 72 of cigar manufacturers' monthly return, a supply of which is being sent each collector, should be used, if received in time for distribution to manufacturers, for making report for December, 1913, and exclusively by all manufacturers of cigars or cigarettes commencing with return rendered by them for the month of January, 1914, and thereafter.

The new form of monthly return is printed in two colors, white and light blue. The white sheets, part 1, are to be used by manufacturers of large cigars *exclusively;* blue sheets, parts 1 and 2, when little cigars or cigarettes are reported on hand or manufactured, and also when, in addition, large cigars are manufactured or reported on hand.

When two or more classes of cigars or cigarettes are manufactured, report of materials used, which is provided for in revised Form 73 of book to be kept by manufacturers of cigars and cigarettes, should be made on the last page of the monthly return.

If the number of lines provided in revised Form 72 for reporting material purchased or removed under permit is not sufficient, entries should be half-spaced or interlined, and then, if the space is completely filled, additional sheets of Form 72 should be used.

ROBT. WILLIAMS, JR.,
Acting Commissioner of Internal Revenue.

(T. D. 1926.)

Income tax.

Regulations permitting text of certificates of ownership, 1004, 1014 and 1016, used by nonresident foreign individuals, partnerships, and organizations, to be printed in foreign language directly under the English text of said certificates.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 30, 1913.

Certificates of ownership required to be filed with interest coupons or orders for registered interest by nonresident foreigners on Form

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1004, by foreign partnerships on Form 1014, and by foreign organizations on Form 1016 shall be printed, as prescribed by regulations, in the English language, and directly under each line of the English text on each of the above-mentioned certificates there may be printed the text of said certificate in a foreign language.

In executing these certificates, however, all blanks to be filled in, with amounts, shall be filled in, using United States dollar values.

These certificates shall be of the same size as prescribed by regulations for all certificates of ownership.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved:
W. G. McAdoo,
Secretary of the Treasury.

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